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

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**Amendment No. 1  
to  
FORM S-4  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**Vivid Seats Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**  
(State of Incorporation)

**7990**  
(Primary Standard Industrial  
Classification Code Number)

**86-3355184**  
(IRS Employer  
Identification No.)

**111 N. Canal Street  
Suite 800  
Chicago, Illinois 60606  
(312) 291-9966**

(Address, including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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**Mr. Stanley Chia  
Chief Executive Officer  
111 N. Canal Street  
Suite 800  
Chicago, Illinois 60606  
(312) 291-9966**

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

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***With copies to:***

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Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this registration statement is declared effective.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act"), check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Securities Exchange Act of 1934 (“Exchange Act”).

Large accelerated filer

☐

Non-accelerated filer

☒

Accelerated filer

☐

Smaller reporting company

☐

Emerging growth company

☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

☐

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

☐

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per security	Proposed maximum aggregate offering price	Amount of registration fee
Class A Common Stock(3)(4)	54,448,433	\$ 9.97(2)	\$542,850,877.01	\$ 59,225.03
Warrants(5)	18,132,810	\$ 1.67(6)	\$ 30,281,792.70	\$ 3,303.74
Class A Common Stock(4)(7)	18,132,810	\$ 11.50(8)	\$208,527,315.00	\$ 22,750.33
Total			\$781,659,989.71	\$ 85,279.10(9)

- (1) All securities being registered will be issued by Vivid Seats Inc., a newly incorporated Delaware corporation (“Vivid Seats PubCo”).
- (2) Estimated solely for the purpose of calculating the registration fee and calculated in accordance with Rule 457(f)(1) and Rule 457(c) of the Securities Act of 1933, as amended (the “Securities Act”), based on the average of the high and low prices of the Class A ordinary shares of Horizon Acquisition Corporation, a Cayman Islands exempted company (“Horizon”), to be merged with and into Vivid Seats PubCo upon consummation of the business combination, on The New York Stock Exchange (the “NYSE”) on May 24, 2021 of \$9.97 per ordinary share.
- (3) The number of shares of Class A common stock of Vivid Seats PubCo, par value \$0.0001 per share (the “Vivid Seats Class A common stock”), being registered includes (i) up to 54,398,433 shares of Horizon Class A ordinary shares that were sold pursuant to Horizon’s Registration Statement on Form S-1 (File No. 333-240313) as part of the units in Horizon’s initial public offering (the “public shares”), which will convert into shares of Vivid Seats Class A common stock pursuant to the Merger in connection with the business combination described in the proxy statement/prospectus/consent solicitation statement forming part of this registration statement and (ii) 50,000 shares of Vivid Seats Class A common stock to be issued to Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”) in connection with the Exchange (as defined below).
- (4) Pursuant to Rule 416(a), there are also being registered an indeterminable number of additional securities as may be issued to prevent dilution resulting from share splits, share dividends or similar transactions.
- (5) The number of warrants being registered includes 18,132,810 warrants to acquire Horizon Class A ordinary shares that were sold as part of the units in Horizon’s initial public offering. All such Horizon warrants will convert into 18,132,810 warrants to acquire shares of Vivid Seats Class A common stock (the “Vivid Seats Public IPO Warrants”) pursuant to the Merger in connection with the business combination described in the proxy statement/prospectus/consent solicitation statement forming part of this registration statement.
- (6) Estimated solely for the purpose of calculating the registration fee and calculated in accordance with Rule 457(f)(1) and Rule 457(c) of the Securities Act, based on the average of the high and low prices of the Horizon IPO Public Warrants on the NYSE on May 20, 2021 of \$1.67 per warrant.
- (7) Reflects the shares of Vivid Seats Class A common stock that may be issued upon exercise of the warrants.
- (8) Calculated pursuant to Rule 457(g) under the Securities Act, based on the exercise price of the warrants.
- (9) A filing fee of \$85,279.10 has already been 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.

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The information in this preliminary proxy statement/prospectus/consent solicitation statement is not complete and may be changed. These securities may not be issued until the registration statement filed with the U.S. Securities and Exchange Commission is effective. The preliminary proxy statement/prospectus/consent solicitation statement is not an offer to sell these securities and does not constitute the solicitation of offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY — SUBJECT TO COMPLETION, DATED JULY 6, 2021

# VIVIDSEATS®

## PROXY STATEMENT FOR EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF HORIZON ACQUISITION CORPORATION

### PROSPECTUS FOR 54,448,433 SHARES OF CLASS A COMMON STOCK 18,132,810 WARRANTS TO PURCHASE SHARES OF CLASS A COMMON STOCK AND 18,132,810 SHARES OF CLASS A COMMON STOCK UNDERLYING WARRANTS OF VIVID SEATS INC.

The board of directors of Horizon Acquisition Corporation, a Cayman Islands exempted company (“Horizon”), has unanimously approved the transaction agreement, dated as of April 21, 2021 (as may be amended from time to time, the “Transaction Agreement”), by and among Horizon, Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”), Hoya Topco, LLC, a Delaware limited liability company (“Hoya Topco”), Hoya Intermediate, LLC, a Delaware limited liability company (“Hoya Intermediate”) and Vivid Seats Inc., a Delaware corporation (“Vivid Seats PubCo”), attached to this proxy statement/prospectus/consent solicitation statement as *Annex A*, pursuant to which, among other transactions, Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation (the “Merger” and, together with the other transactions contemplated by the Transaction Agreement, the “business combination”) resulting in the reorganization of the combined post-business combination company into an umbrella partnership C corporation (or “Up-C”) structure.

Immediately following the Merger and in accordance with the Transaction Agreement and the other ancillary agreements contemplated thereby, a series of transactions will occur whereby (i) certain third-party investors (including Sponsor or an affiliate thereof) will purchase an aggregate of 22,500,000 shares of Class A common stock of Vivid Seats PubCo, par value \$0.0001 per share (“Vivid Seats Class A common stock”) for an aggregate purchase price of \$225.0 million (the “PIPE Subscription”), (ii) Vivid Seats PubCo will purchase all of the issued and outstanding capital stock of each of CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7B VS Equity, LLC and CM7C VS Equity, LLC (collectively, the “Crescent Blockers”, and the outstanding capital stock of the Crescent Blockers, the “Crescent Blocker Shares”) from Crescent Mezzanine Partners VIB, L.P., Crescent Mezzanine Partners VIC, L.P., NPS/Crescent Strategic Partnership II, LP and Crescent Mezzanine Partners VIIB, L.P. (collectively, the “Blocker Sellers”, and such purchase, the “Blocker Purchase”) in exchange for cash (the “Blocker Purchase Price”), in an amount equal to (A) an aggregate of \$107,573.05, plus interest accruing from June 30, 2017 to the date of closing of the Merger compounding semi-annually on June 30 and December 31 of each year, *minus* (B) the aggregate amount of estimated tax liabilities of the Blocker Sellers for the period ending on the closing date of the Merger (such tax liabilities, the “Blocker Tax Liabilities”), (iii) Vivid Seats PubCo will contribute cash to Hoya Intermediate in an amount equal to (A) all available cash of Vivid Seats PubCo following the Merger and the PIPE Subscription, *minus* (B) the Blocker Purchase Price, *minus* (C) the Blocker Tax Liabilities in exchange for Common Units of Hoya Intermediate (“Intermediate Common Units”) and warrants to purchase Intermediate Common Units (together, the “Intermediate Contribution and Issuance”), (iv) Hoya Intermediate will redeem 100% of the Intermediate Common Units held by Crescent Mezzanine Partners VI, L.P., Crescent Mezzanine Partners VII, L.P., Crescent Mezzanine Partners VII (LTL), L.P. and CBDC Universal Equity, Inc. (collectively, the “Redeemed Crescent Parties”) in exchange for cash (the “Crescent Redemption”), (v) Hoya Topco will subscribe for 118,200,000 newly issued Class B common stock of Vivid Seats PubCo, par value \$0.0001 per share (“Vivid Seats Class B common stock”) and 6,000,000 warrants to purchase Vivid Seats Class B common stock (together, “Class B Issuance”) and (vi) Hoya Intermediate will contribute cash to Hoya Midco, LLC, a Delaware limited liability company (“Hoya Midco”). Immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units (as defined herein), resulting in a cash payment of \$225.1 million. Upon the closing of the business combination, Vivid Seats expects to apply \$488.9 million of the business combination and PIPE Subscription proceeds towards debt repayments resulting in the full repayment of its May 2020 First Lien Loan (as defined herein) and a partial repayment of its June 2017 First Lien Loan (as defined herein). As a result of the business combination, assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Hoya Topco will hold approximately 60.6% of the issued and outstanding Intermediate Common Units and Vivid Seats PubCo will hold approximately 39.4% of the Intermediate Common Units. Following the consummation of the business combination, Vivid Seats PubCo’s assets will consist of its direct and indirect interests in Hoya Intermediate.

As described in this proxy statement/prospectus/consent solicitation statement, Horizon’s shareholders are being asked to consider and vote upon (among other things) the business combination and the other proposals set forth herein.

Horizon’s Class A ordinary shares, Horizon’s warrants and Horizon’s units are currently traded on The New York Stock Exchange (“NYSE”) under the ticker symbols “HZAC,” “HZAC WS” and “HZAC.U,” respectively. Vivid Seats PubCo will apply for listing, to be effective at the Closing (as defined herein), of its shares of Class A common stock and warrants on The Nasdaq Capital Market (“Nasdaq”) under the symbols “SEAT” and “SEAT WS,” respectively. Vivid Seats PubCo will not have units traded following the Closing.

It is anticipated that, upon completion of the business combination and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo’s ownership will be as follows: (1) Horizon’s public shareholders will own approximately 19.9% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of the Sponsor, will own approximately 1.8% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). The board of managers of Hoya Topco is controlled by the designees of GTCR Fund XI/B LP and GTCR Fund XI/C LP (together with GTCR Co-Invest XLLP, GTCR Golder Rauner, L.L.C., GTCR Golder Rauner II, L.L.C., GTCR Management XI LLC and GTCR LLC, our “Private Equity Owner”) and their affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo shareholders through Hoya Topco’s ownership of approximately 60.6% of the voting power of Vivid Seats PubCo’s outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats PubCo Board of Directors pursuant to the Stockholders’ Agreement to be entered into by and among Vivid Seats PubCo, Sponsor and Hoya Topco at the consummation of the business combination. As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a “controlled company” within the meaning of applicable Nasdaq (as defined herein) listing rules.

Each of Horizon and Vivid Seats PubCo is an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012 and has elected to comply with certain reduced public company reporting requirements.

This proxy statement/prospectus/consent solicitation statement provides you with detailed information about the business combination and other matters to be considered at the extraordinary general meeting of Horizon’s shareholders. Horizon and Vivid Seats PubCo encourage you to carefully read this entire document. You should also carefully consider the risk factors described in “[Risk Factors](#)” beginning on page 32.

These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this proxy statement/prospectus. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus/consent solicitation statement is dated \_\_\_\_\_, 2021 and is first being mailed to Horizon shareholders on or about \_\_\_\_\_, 2021.

Dear Shareholders of Horizon:

You are cordially invited to attend the extraordinary general meeting of shareholders of Horizon Acquisition Corporation (“Horizon”). At the extraordinary general meeting, Horizon shareholders will be asked to consider and vote on proposals to:

- (1) (a) approve and adopt the Transaction Agreement, dated as of April 21, 2021 (as the same may be amended, the “Transaction Agreement”), by and among Horizon, Sponsor, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo, and (b) approve the other transactions contemplated by the Transaction Agreement (the “business combination” and such proposal, the “Business Combination Proposal”) in accordance with applicable law and exchange rules and regulations;
- (2) approve, as a special resolution, the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* and to authorize the merger (the “Merger”) of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation (the “Merger Proposal”);
- (3) approve certain material differences between the Horizon amended and restated memorandum and articles of association and the certificate of incorporation of Vivid Seats PubCo and the bylaws of Vivid Seats PubCo that will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger (the “Organizational Documents Proposals”);
- (4) approve, for purposes of complying with NYSE Listing Rule 312.03, the issuance of shares of Vivid Seats PubCo in connection with the business combination and the PIPE Subscription (the “NYSE Proposal”); and
- (5) approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal (the “Adjournment Proposal” and, together with the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal, the “Proposals”).

Each of the Proposals is more fully described in the accompanying proxy statement/prospectus/consent solicitation statement, which each Horizon shareholder is encouraged to review carefully.

Horizon Class A ordinary shares, par value \$0.0001 per share (“Horizon Class A ordinary shares”) and the Horizon IPO Public Warrants, which are exercisable for Horizon Class A ordinary shares under certain circumstances, are currently listed on the NYSE under the symbols “HZAC” and “HZAC WS,” respectively. Certain Horizon Class A ordinary shares and warrants currently trade as units consisting of one Horizon Class A ordinary share and one-third of one Horizon IPO Public Warrant, and are listed on the NYSE under the symbol “HZAC.U.” Vivid Seats PubCo will apply for listing, to be effective at the time of the business combination, of its Vivid Seats Class A common stock and warrants on Nasdaq under the symbols “SEAT” and “SEAT WS,” respectively. Vivid Seats PubCo will not have units traded following consummation of the business combination. It is a condition of the consummation of the business combination that Vivid Seats Class A common stock is approved for listing on Nasdaq, but there can be no assurance such listing condition will be met. If such listing condition is not met, the business combination will not be consummated unless the listing condition set forth in the Transaction Agreement is waived by the parties.

Pursuant to Horizon’s amended and restated memorandum and articles of association, Horizon is providing the holders of Horizon Class A ordinary shares originally sold as part of the units issued in its initial public offering, which closed on August 25, 2020 (the “IPO” and such holders, the “public shareholders”), with the opportunity to redeem, upon the Closing, Horizon Class A ordinary shares then held by them for cash equal to their pro rata share of the aggregate amount on deposit (as of two business days prior to the Closing) in the trust account (the “Trust Account”) that holds the proceeds (including interest but net of franchise and income taxes payable) from the IPO and a concurrent private placement of units to Sponsor. For illustrative purposes,



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based on the fair value of marketable securities held in the Trust Account as of December 31, 2020 of approximately \$544 million, the estimated per share redemption price would have been approximately \$10.00, subject to adjustment for taxes payable from interest earned. Public shareholders may elect to redeem their shares even if they vote for the Business Combination Proposal. A public shareholder, together with any of his, her or its affiliates or any other person with whom it is acting in concert or as a “group” (as defined under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended), will be restricted from redeeming in the aggregate his, her or its shares or, if part of such a group, the group’s shares, in excess of 15% of the outstanding Horizon Class A ordinary shares sold in the IPO. Holders of Horizon’s outstanding warrants sold in the IPO, which are exercisable for Horizon Class A ordinary shares under certain circumstances, do not have redemption rights in connection with the business combination. Sponsor has agreed to waive its redemption rights in connection with the Closing with respect to any Horizon equity securities it may hold. Currently, Sponsor owns approximately 28.7% of outstanding Horizon Class A ordinary shares and all Horizon Class B ordinary shares, including all of the founder shares. In connection with the Exchange, the Sponsor will tender all of its Horizon Class B ordinary shares in exchange for 50,000 Horizon Class A ordinary shares and Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein). Sponsor has agreed to vote its Horizon Class A ordinary shares and Horizon Class B ordinary shares in favor of each of the Proposals.

Horizon is providing this proxy statement/prospectus/consent solicitation statement and accompanying proxy card to its shareholders in connection with the solicitation of proxies to be voted at the extraordinary general meeting and any adjournments or postponements of the extraordinary general meeting. **Your vote is very important. Whether or not you plan to attend the extraordinary general meeting in person, please submit your proxy card without delay.**

**Horizon and Vivid Seats PubCo encourage you to read this proxy statement/prospectus/consent solicitation statement carefully. In particular, you should review the matters discussed under the caption “Risk Factors” beginning on page 32 of this proxy statement/prospectus/consent solicitation statement.**

**Horizon’s board of directors recommends that Horizon shareholders vote FOR each of the Proposals. When you consider the recommendation of Horizon’s board of directors in favor of each of the Proposals, you should keep in mind that certain of Horizon’s directors and officers have interests in the business combination that may conflict with your interests as a shareholder. See the section entitled “Proposal No. 1 — The Business Combination Proposal — Interests of Certain Persons in the Business Combination.”**

Approval of the Business Combination Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal will require an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on any of the NYSE Proposal and the Adjournment Proposal.

Approval of the Merger Proposal will require a special resolution under Cayman Islands law, being the affirmative vote of the holders of a majority at least two-thirds of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Merger Proposal.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted **FOR** each of the Proposals presented at the extraordinary general meeting. If you fail to return your proxy card or fail to submit your proxy by telephone or over the Internet, or fail to instruct your bank, broker or other nominee how to vote, and do not attend the extraordinary general meeting in person, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the extraordinary general meeting and, if a quorum is present, will have no effect on the Merger Proposal, the NYSE Proposal or the Adjournment Proposal, but will have the same effect as a vote **AGAINST** each of the Business Combination Proposal and the Organizational Documents Proposals. If you are a shareholder of record and you attend the extraordinary general meeting and wish to vote in person, you may withdraw your proxy and vote in person.

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TO EXERCISE YOUR REDEMPTION RIGHTS, YOU MUST ELECT TO HAVE HORIZON REDEEM YOUR SHARES FOR A PRO RATA PORTION OF THE FUNDS HELD IN THE TRUST ACCOUNT AND TENDER YOUR SHARES TO HORIZON'S TRANSFER AGENT AT LEAST TWO (2) BUSINESS DAYS PRIOR TO THE VOTE AT THE EXTRAORDINARY GENERAL MEETING. YOU MAY TENDER YOUR SHARES BY EITHER DELIVERING YOUR SHARE CERTIFICATE TO THE TRANSFER AGENT OR BY DELIVERING YOUR SHARES ELECTRONICALLY USING THE DEPOSITORY TRUST COMPANY'S DWAC (DEPOSIT WITHDRAWAL AT CUSTODIAN) SYSTEM. IF THE BUSINESS COMBINATION IS NOT COMPLETED, THEN THESE SHARES WILL NOT BE REDEEMED FOR CASH. IF YOU HOLD THE SHARES IN STREET NAME, YOU WILL NEED TO INSTRUCT THE ACCOUNT EXECUTIVE AT YOUR BANK OR BROKER TO WITHDRAW THE SHARES FROM YOUR ACCOUNT IN ORDER TO EXERCISE YOUR REDEMPTION RIGHTS.

Thank you for your consideration of these matters.

Sincerely,

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Todd L. Boehly  
Chief Executive Officer, Chief  
Financial Officer and Director  
Horizon Acquisition Corporation

**Whether or not you plan to attend the extraordinary general meeting of Horizon shareholders, please submit your proxy by completing, signing, dating and mailing the enclosed proxy card in the pre-addressed postage paid envelope or by using the telephone or Internet procedures provided to you by your broker or bank.** If your shares are held in an account at a brokerage firm or bank, you must instruct your broker or bank on how to vote your shares or, if you wish to attend the extraordinary general meeting of Horizon shareholders and vote in person, you must obtain a proxy from your broker or bank.

**Neither the Securities and Exchange Commission nor any state securities commission has passed upon the adequacy or accuracy of this proxy statement/prospectus/consent solicitation statement. Any representation to the contrary is criminal offense.**

**Horizon Acquisition Corporation**  
**600 Steamboat Road, Suite 200**  
**Greenwich, CT 06830**

**NOTICE OF EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF HORIZON ACQUISITION CORPORATION**

**To Be Held On                      , 2021**

To the Shareholders of Horizon Acquisition Corporation:

NOTICE IS HEREBY GIVEN that the extraordinary general meeting of shareholders of Horizon Acquisition Corporation (“Horizon”) will be held at                      a.m., local time, on                      , 2021, at                      for the following purposes:

1. **Proposal No. 1 — The Business Combination Proposal** — To consider and vote upon a proposal to (a) approve and adopt the Transaction Agreement, dated as of April 21, 2021 (as the same may be amended, the “Transaction Agreement”), by and among Horizon, Sponsor, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo, and (b) approve and the other transactions contemplated by the Transaction Agreement (the “business combination” and such proposal, the “Business Combination Proposal”).
2. **Proposal No. 2 — The Merger Proposal** — To consider and vote upon a proposal (the “Merger Proposal”) to approve, as a special resolution, the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* and to authorize the merger (the “Merger”) of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation.
3. **The Organizational Documents Proposals** — To consider and vote upon the following three separate proposals (collectively, the “Organizational Documents Proposals”) to approve the following material differences between Horizon amended and restated memorandum and articles of association and the certificate of incorporation of Vivid Seats PubCo (the “Vivid Seats PubCo Amended and Restated Charter”) and the bylaws of Vivid Seats PubCo (the “Vivid Seats PubCo Amended and Restated Bylaws”) that will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger:
  - i. **Proposal No. 3 — Organizational Documents Proposal A** — To authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, par value \$0.0001 per share (the “Horizon Class A ordinary shares”), 40,000,000 shares of Horizon Class B ordinary shares, par value \$0.0001 per share (the “Horizon Class B ordinary shares”), and 1,000,000 preference shares, par value \$0.0001 per share, to 500,000,000 shares of Class A common stock, par value \$0.0001 per share, of Vivid Seats PubCo (the “Vivid Seats Class A common stock”), 250,000,000 shares of Class B common stock, par value \$0.0001 per share, of Vivid Seats PubCo (the “Vivid Seats Class B common stock”) and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo.
  - ii. **Proposal No. 4 — Organizational Documents Proposal B** — To authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders’ Agreement (as defined herein).
  - iii. **Proposal No. 5 — Organizational Documents Proposal C** — To authorize that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain “exempted persons” (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo);

- iv. **Proposal No. 6 — Organizational Documents Proposal D** — To authorize that the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws will adopt Delaware as the exclusive forum for certain stockholder litigation;
  - v. **Proposal No. 7 — Organizational Documents Proposal E** — To authorize all other changes in connection with the replacement of Horizon’s amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from “Horizon Acquisition Corporation” to “Vivid Seats Inc.,” (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon’s status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon’s board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination.
4. **Proposal No. 8 — The NYSE Proposal** — To consider and vote upon a proposal to approve, for purposes of complying with NYSE Listing Rule 312.03, the issuance of shares of Vivid Seats PubCo in connection with the business combination and the PIPE Subscription (the “NYSE Proposal”).
5. **Proposal No. 9 — The Adjournment Proposal** — To consider and vote upon a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal (the “Adjournment Proposal” and, together with the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal, the “Proposals”).

Only holders of record of Horizon Class A ordinary shares and Horizon Class B ordinary shares at the close of business on \_\_\_\_\_, 2021 are entitled to notice of the extraordinary general meeting and to vote at the extraordinary general meeting and any adjournments or postponements thereof.

Pursuant to Horizon’s amended and restated memorandum and articles of association, Horizon is providing the holders of Horizon Class A ordinary shares originally sold as part of the units issued in its initial public offering, which closed on August 25, 2020 (the “IPO” and such holders, the “public shareholders”), with the opportunity to redeem, upon the Closing, Horizon Class A ordinary shares then held by them for cash equal to their pro rata share of the aggregate amount on deposit (as of two business days prior to the Closing) in the trust account (the “Trust Account”) that holds the proceeds (including interest but net of franchise and income taxes payable) from the IPO and a concurrent private placement of units to Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”). For illustrative purposes, based on the fair value of marketable securities held in the Trust Account as of December 31, 2020 of approximately \$544 million, the estimated per share redemption price would have been approximately \$10.00. Public shareholders may elect to cause the redemption of their shares even if they vote for the Business Combination Proposal. A public shareholder, together with any of his, her or its affiliates or any other person with whom it is acting in concert or as a “group” (as defined under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended), will be restricted from redeeming in the aggregate his, her or its shares or, if part of such a group, the group’s shares, in excess of 15% of the outstanding Horizon Class A ordinary shares sold in the IPO. Holders of Horizon IPO Public Warrants, which are exercisable for Horizon’s Class A ordinary shares under certain circumstances, do not have redemption rights in connection with the business combination. Sponsor has agreed to waive its redemption rights in connection with the Closing with respect to any Horizon equity securities it may hold. Currently, Sponsor owns approximately 28.7% of outstanding Horizon Class A ordinary shares and all Horizon Class B ordinary shares, including all of the founder shares. Sponsor has agreed to vote its Horizon Class A ordinary shares and Horizon Class B ordinary shares in favor of each of the Proposals.

The Closing is conditioned on the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal at the extraordinary general meeting. The Organizational Documents Proposals are conditioned on the approval of the Business Combination Proposal, the

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Merger Proposal and the NYSE Proposal. The Adjournment Proposal is not conditioned on the approval of any other Proposal set forth in the accompanying proxy statement/prospectus/consent solicitation statement.

Your attention is directed to the proxy statement/prospectus/consent solicitation statement accompanying this notice (including the annexes thereto) for a more complete description of the proposed business combination and each of the Proposals. You are encouraged to read this proxy statement/prospectus/consent solicitation statement carefully. If you have any questions or need assistance voting your shares, please call Horizon's proxy solicitor, \_\_\_\_\_, at \_\_\_\_\_ (banks and brokers call collect at \_\_\_\_\_).

\_\_\_\_\_, 2021

By Order of the Board of Directors

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Todd L. Boehly  
Chief Executive Officer, Chief Financial Officer  
and Director  
Horizon Acquisition Corporation

**Important Notice Regarding the Availability of Proxy Materials for the Extraordinary General Meeting of Shareholders to be held on \_\_\_\_\_, 2021:** This notice of meeting and the related proxy statement/prospectus/consent solicitation statement will be available at \_\_\_\_\_.

**NOTICE OF SOLICITATION OF WRITTEN CONSENTS OF  
THE HOLDERS OF HORIZON IPO PUBLIC WARRANTS AND HORIZON IPO PRIVATE PLACEMENT WARRANTS**

On August 25, 2020, Horizon consummated the IPO of 50,000,000 units (the “Horizon Units”), each consisting of one Horizon Class A ordinary share and one-third of one Horizon IPO Public Warrant, each whole Horizon IPO Public Warrant entitling the holder thereof to purchase one Horizon Class A ordinary share at an exercise price of \$11.50 per share, subject to adjustment. The Horizon Units were sold at an offering price of \$10.00 per unit, generating gross proceeds of \$500,000,000. Concurrently, the Sponsor also purchased 5,933,333 Horizon IPO Private Placement Warrants for \$8,900,000. On August 26, 2020, Horizon issued an additional 4,398,433 Horizon Units pursuant to the exercise by the underwriters of a portion of their over-allotment option in connection with the IPO, with each such unit priced at \$10.00 per unit, generating total gross proceeds of \$43,984,330. Concurrently, the Sponsor also purchased an additional 586,458 Horizon IPO Private Placement Warrants for \$879,687. Of the proceeds received from the consummation of the IPO, the private placement purchases by the Sponsor and the sale of the Horizon Units in connection with the exercise of the over-allotment option, \$543,984,330 (or \$10.00 per Horizon Unit sold in the public offering) was deposited in Horizon’s trust account.

In connection with the IPO, Horizon entered into a warrant agreement, dated August 25, 2020 (the “Warrant Agreement”), with Continental Stock Transfer & Trust Company, as warrant agent (the “Warrant Agent”), which sets forth, among other things, the expiration and exercise price of and procedure for exercising the Horizon IPO Public Warrants and the Horizon IPO Private Placement Warrants (together, the “Horizon IPO Warrants”); certain adjustment features of the terms of exercise; provisions relating to redemption and cashless exercise of the Horizon IPO Warrants; certain registration rights of the holders of Horizon IPO Warrants; provision for amendments to the Warrant Agreement; and indemnification of the Warrant Agent by Horizon under the Warrant Agreement.

On October 9, 2020, Horizon announced that the holders of the Horizon Units may elect to separately trade the Horizon Class A ordinary shares and Horizon IPO Public Warrants included in the Horizon Units commencing on October 12, 2020. Any Horizon Units not separated continue to trade on the New York Stock Exchange (“NYSE”) under the symbol “HZAC.U”. Any underlying Horizon Class A ordinary shares and Horizon IPO Public Warrants that are separated trade or will trade on the NYSE under the symbols “HZAC” and “HZAC WS,” respectively. No fractional warrants have been or will be issued upon separation of the Horizon Units and only whole warrants trade or will trade.

On April 12, 2021, the Staff of the U.S. Securities and Exchange Commission (the “Staff”) issued the “Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies” (“SPACs” and such statement, the “SEC Statement”), which clarified guidance for all SPAC-related companies regarding the accounting and reporting for their warrants. Following review of the SEC Statement, Horizon reevaluated the accounting treatment of the Horizon IPO Warrants as equity, and concluded that, based on the SEC Statement, the Horizon IPO Warrants should be, and should previously have been, classified as a liability measured at fair value, with non-cash fair value adjustments recorded in earnings at each reporting period. Accordingly, Horizon filed restated financial statements as of and for the period from June 12, 2020 through December 31, 2020 in Amendment No. 1 to its Annual Report on Form 10-K/A on May 10, 2021 and financial statements as of and for the period from January 1, 2021 through March 31, 2021 in its Quarterly Report on Form 10-Q on May 24, 2021.

On April 21, 2021, Horizon, Sponsor, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo entered into the Transaction Agreement, and upon the terms and subject to the conditions of the Transaction Agreement, and in accordance with the Delaware General Corporation Law and the Cayman Islands Companies Act, Horizon will merge with and into Vivid Seats PubCo, the separate corporate existence of Horizon will cease and Vivid Seats PubCo will be the surviving corporation of the Merger. At the effective time of the Merger (the “Effective Time”), by virtue of the Merger, each Horizon Class A ordinary share will be automatically cancelled and converted into the right to receive one share of Vivid Seats Class A common stock. At the Effective Time, each warrant to purchase shares of Horizon common stock, including each Horizon IPO Warrant, issued and outstanding immediately prior to the Effective Time will automatically become a warrant to purchase shares of Vivid Seats Class A common stock.



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The accompanying proxy statement/prospectus/consent solicitation statement is being delivered to you on behalf of the Horizon board of directors to request that holders of Horizon IPO Warrants, including holders of Horizon Units that have not separated the Horizon IPO Public Warrants included therein, execute and return written consents to adopt the proposed amendment and restatement of the Warrant Agreement described in the accompanying proxy statement/prospectus/consent solicitation statement (the “Warrant Amendment”), to which you should give your careful attention. The Warrant Amendment, if adopted and as of the time of such adoption, would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation. Specifically, as described further in the accompanying proxy statement/prospectus/consent solicitation statement and as set forth in the proposed form of the Warrant Amendment attached thereto as *Annex M*, the Warrant Amendment proposes to, among other things: (i) amend the rights specific to the Horizon IPO Private Placement Warrants such that (A) the rights specific to such warrants are retained by the holder thereof regardless of such holder’s identity, (B) such warrants are no longer subject to redemption by Horizon at any price and (C) such rights are no longer generally exercisable on a “cashless basis”; (ii) eliminate Horizon’s ability to redeem any Horizon IPO Public Warrants unless the Horizon Class A ordinary shares are trading at a price equal to or in excess of \$18.00 per share; and (iii) remove certain language related to the treatment of Horizon IPO Warrants in the event of a tender offer for the shares underlying such warrants.

Pursuant to the terms of the Warrant Agreement, the proposed Warrant Amendment requires the vote or written consent of holders of at least 65% of the outstanding Horizon IPO Public Warrants and, solely with respect to the amendment to the terms of the Horizon IPO Private Placement Warrants or any provision of the Warrant Agreement with respect to the Horizon IPO Private Placement Warrants set forth in the Warrant Amendment, 65% of the outstanding Horizon IPO Private Placement Warrants. The Sponsor, an affiliate of Horizon, currently holds 5,166,666 Horizon IPO Public Warrants and all of the Horizon IPO Private Placement Warrants and has agreed in the Transaction Agreement to use commercially reasonable efforts to revise the terms of the Horizon IPO Warrants such that the Horizon IPO Warrants be treated as equity under the rules and guidelines of the SEC at and after the closing of the Transactions, including using commercially reasonable efforts to obtain any the warrant holder approvals if necessary to accomplish the foregoing. If requisite consents are obtained from holders of the Horizon IPO Warrants by the Consent Solicitation End Date, the Warrant Amendment will be effected by an amendment in the form of *Annex M* attached to the accompanying proxy statement/prospectus/consent solicitation statement, which is to be executed by Horizon and the Warrant Agent promptly following the Consent Solicitation End Date. Effectiveness of the Warrant Amendment is not conditioned upon consummation of the business combination.

Neither Horizon nor any of Horizon’s management or Horizon’s board of directors is making any recommendation as to whether holders of warrants should consent to the Warrant Amendment in this consent solicitation. Each holder of a Horizon IPO Warrant must make its own decision as to whether to exchange some or all of its warrants and, as applicable, consent to the Warrant Amendment.

This consent solicitation is made solely upon the terms and conditions in this proxy statement/prospectus/consent solicitation statement and in the related written consent (as it may be supplemented and amended from time to time, the “Written Consent”). This consent solicitation will be open until 11:59 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2021, or such later time and date to which we may extend (the “Consent Solicitation End Date”).

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You may elect to provide your consent with respect to some or all of your Horizon IPO Warrants. If you elect to provide your consent, please follow the instructions in this proxy statement/prospectus/consent solicitation statement and the related documents, including the Written Consent. If you elect to provide your consent, you may withdraw your consent at any time before the Consent Solicitation End Date by following the instructions in this proxy statement/prospectus/consent solicitation statement.

By Order of the Board of Directors of Horizon

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Todd L. Boehly  
Chief Executive Officer, Chief Financial Officer and  
Director Horizon Acquisition Corporation

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## ADDITIONAL INFORMATION

If you have questions about the business combination or the extraordinary general meeting, or if you need to obtain copies of the enclosed proxy statement/prospectus/consent solicitation statement, proxy card or other documents incorporated by reference in the proxy statement/prospectus/consent solicitation statement, you may contact Horizon's proxy solicitor listed below. You will not be charged for any of the documents you request.

Telephone: (800) 662-5200  
(banks and brokers call collect at (203) 658-9400)  
Email: [HZAC.info@investor.morrowsdali.com](mailto:HZAC.info@investor.morrowsdali.com)

In order for you to receive timely delivery of the documents in advance of the extraordinary general meeting to be held on \_\_\_\_\_, 2021, you must request the information no later than five business days prior to the date of the extraordinary general meeting, by \_\_\_\_\_, 2021.

This proxy statement/prospectus/consent solicitation statement incorporates important business and financial information that is not included in or delivered with the document. For a more detailed description of the information incorporated by reference in the enclosed proxy statement/prospectus/consent solicitation statement and how you may obtain it, see the section entitled "Where You Can Find Additional Information."

## TRADEMARKS

This document contains references to trademarks and service marks belonging to other entities. Solely for convenience, trademarks and trade names referred to in this proxy statement/prospectus/consent solicitation statement may appear without the ® or ™ symbols, but such references are not intended to indicate, in any way, that the applicable licensor will not assert, to the fullest extent under applicable law, its rights to these trademarks and trade names. Horizon and Vivid Seats do not intend their use or display of other companies' trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of Horizon or Vivid Seats by, any other companies.

Notwithstanding references thereto in this proxy statement/prospectus/consent solicitation statement, the website of Vivid Seats is not part of and is not incorporated in the proxy statement/prospectus/consent solicitation statement, and you should not consider information found on Vivid Seats' website to be part of this proxy statement/prospectus/consent solicitation statement.

## MARKET, INDUSTRY AND OTHER DATA

This proxy statement/prospectus/consent solicitation statement includes estimates regarding market and industry data and forecasts, which are based on publicly available information, industry publications and surveys, reports from government agencies, reports by market research firms or other independent sources and our own estimates based on our management's knowledge of and experience in the market sectors in which we compete.

Certain monetary amounts, percentages and other figures included in this proxy statement/prospectus/consent solicitation statement have been subject to rounding adjustments. Accordingly, figures shown as totals in certain tables or charts may not be the arithmetic aggregation of the figures that precede them, and figures expressed as percentages in the text may not total 100% or, as applicable, when aggregated may not be the arithmetic aggregation of the percentages that precede them.

## CERTAIN DEFINED TERMS

Unless the context otherwise requires, references in this proxy statement/prospectus/consent solicitation statement to:

- "2021 ESPP" are to the Vivid Seats Inc. 2021 Employee Stock Purchase Plan;

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- “2021 Plan” are to the Vivid Seats Inc. 2021 Incentive Award Plan;
- “Agreement End Date” are to October 21, 2021;
- “Available Horizon Cash” are to the cash available in the Trust Account;
- “Blocker Corporations” are to the Blocker Corporations as defined in the Tax Receivable Agreement;
- “Blocker Purchase” are to the purchase by Vivid Seats PubCo of all the issued and outstanding capital stock of each of the Crescent Blockers and the outstanding capital stock of the Blocker Sellers in exchange for the Blocker Purchase Price;
- “Blocker Purchase Price” are to cash in an amount equal to (a) an aggregate of \$107,573.05 plus interest accruing from June 30, 2017 to the date of the closing of the Merger, compounding semi-annually on June 30 and December 31 of each year, *minus* (b) the aggregate amount of the Blocker Tax Liabilities;
- “Blocker Sellers” are to Crescent Mezzanine Partners VIB, L.P., Crescent Mezzanine Partners VIC, L.P., NPS/Crescent Strategic Partnership II, LP and Crescent Mezzanine Partners VIIB, L.P.;
- “Blocker Tax Liabilities” are to the estimated tax liabilities of the Blocker Sellers for the period ending on the closing date of the Merger;
- “business combination” are to the transactions contemplated by the Transaction Agreement, including, (a) the Merger, (b) the Class A Redemption, (c) the Blocker Purchase, (d) the Crescent Redemption, (e) the Intermediate Contribution and Issuance and (f) the Class B Issuance;
- “CICA” is to the Companies Act (As Revised) of the Cayman Islands;
- “Class A Redemption” are to the redemption by Hoya Topco of 100% of the outstanding Class A Units of Hoya Topco held by the Redeemed Crescent Parties in exchange for Common Units of Hoya Intermediate;
- “Class B Issuance” are to the issuance at the Closing by Vivid Seats PubCo to Hoya Topco of 118,200,000 shares of Vivid Seats Class B common stock and warrants to purchase 6,000,000 shares of Vivid Seats Class B common stock at the Closing;
- “Closing” are to the consummation of the business combination;
- “Closing Date” are to the date the Closing takes place;
- “Code” are to the U.S. Internal Revenue Code of 1986, as amended;
- “consent solicitation” are to the solicitation of consents from the holders of Horizon IPO Warrants to the Warrant Amendment;
- “Consent Solicitation End Date” are to 11:59 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2021, or such later time and date to which Horizon may extend the consent solicitation;
- “Crescent Blockers” are to CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7B VS Equity, LLC and CM7C VS Equity, LLC;
- “Crescent Holders” are to the Crescent Blockers and the Redeemed Crescent Parties;
- “DGCL” are to the General Corporation Law of the State of Delaware;
- “Effective Time” are to the time at which the Merger becomes effective pursuant to the Transaction Agreement;
- “Existing Warrant Agreement” are to that certain Warrant Agreement, dated as of August 20, 2020, between Continental Stock Transfer & Trust Company and Horizon;
- “Form of New Warrant Agreement” are to that certain warrant agreement to be entered into by and among Vivid Seats PubCo and Continental Stock Transfer & Trust Company;
- “founder shares” are to Horizon Class B ordinary shares initially purchased by Sponsor in a private placement prior to the IPO, and the Horizon Class A ordinary shares issued upon the conversion thereof;



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- “Horizon \$10.00 Exercise Warrants” are to warrants for Horizon Class A ordinary shares with an exercise price of \$10.00, to be issued in connection with the Exchange;
- “Horizon \$15.00 Exercise Warrants” are to warrants for Horizon Class A ordinary shares with an exercise price of \$15.00, to be issued in connection with the Exchange;
- “Horizon Class A ordinary shares” are to Horizon’s Class A ordinary shares, par value \$0.0001 per share;
- “Horizon Class B ordinary shares” are to Horizon’s Class B ordinary shares, par value \$0.0001 per share;
- “Horizon Equityholders” are to Sponsor and any investment vehicles or funds managed or controlled, directly or indirectly, by any of Sponsor’s affiliates;
- “Horizon IPO Private Placement Warrants” are to the warrants sold by Horizon as part of the private placement in connection with the IPO;
- “Horizon IPO Public Warrants” are to the warrants sold by Horizon as part of the units in the IPO;
- “Horizon ordinary shares” are to Horizon Class A ordinary shares and Horizon Class B ordinary shares, collectively;
- “Horizon Share Redemption” are to the election of an eligible (as determined in accordance with Horizon’s governing documents) holder of shares of Horizon ordinary shares to redeem all or a portion of the shares of Horizon ordinary shares held by such holder at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding Horizon ordinary shares, which redemption will completely extinguish public shareholders’ rights as shareholders of Horizon (including the right to receive further liquidation distributions, if any), in connection with the Proposals;
- “Horizon Share Redemption Amount” are to the aggregate amount payable with respect to all Horizon Share Redemptions;
- “Horizon Shareholder Approval” are to the approval of the Proposals, in the case of the Business Combination Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal, by an affirmative vote of the holders of at least a majority of the outstanding shares of Horizon ordinary shares entitled to vote and actually cast thereon (as determined in accordance with Horizon’s governing documents) at a Horizon Shareholders’ Meeting duly called by Horizon’s board of directors and held for such purpose or, in the case of the Merger Proposal, by an affirmative vote of the holders of a majority of at least two-thirds of the outstanding shares of Horizon ordinary shares entitled to vote and actually cast thereon (as determined in accordance with Horizon’s governing documents) at a Horizon Shareholders’ Meeting duly called by Horizon’s board of directors and held for such purpose;
- “Horizon Shareholders’ Meeting” are to a meeting of Horizon’s shareholders convened and held in accordance with Horizon’s governing documents and Section 710 of the NYSE Listing Rules;
- “Horizon Warrants” are to the Horizon IPO Public Warrants, Horizon IPO Private Placement Warrants, the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants;
- “Hoya Intermediate Warrants” are warrants issued by Hoya Intermediate to Vivid Seats PubCo and Hoya Topco;
- “Intermediate Common Units” means Common Units of Hoya Intermediate;
- “Intermediate Contribution and Issuance” means the contribution by Vivid Seats PubCo of cash to Hoya Intermediate in exchange for Intermediate Common Units and warrants to purchase Intermediate Common Units;

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- “Intermediate Merger” are to the merger of a newly formed subsidiary of Hoya Topco with and into Hoya Intermediate, pursuant to which, among other things, Hoya Intermediate will recapitalize its existing common units, preferred units and senior preferred units;
- “IPO” are to Horizon’s initial public offering of units, the base offering of which closed on August 25, 2020;
- “Lock-up Period” are to the period beginning on the Closing Date and ending on the date that is twelve (12) months following the Closing Date;
- “lock-up shares” are to (a) with respect to Sponsor, the shares of Vivid Seats PubCo common stock and warrants exercisable for shares of Vivid Seats PubCo common stock held by Sponsor and its affiliates (other than any such shares acquired in connection with the PIPE Subscription) and (b) with respect to Hoya Topco, any Vivid Seats PubCo common stock and any warrants exercisable for shares of Vivid Seats PubCo common stock held by Hoya Topco and its affiliates;
- “Marketplace GOV” are to the total transactional amount of Marketplace segment orders placed on the Vivid Seats platform in a period, inclusive of fees, exclusive of taxes, and net of event cancellations that occurred during that period;
- “Merger” are to the merging of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will be the surviving entity;
- “Minimum Available Horizon Cash Amount” is \$380.0 million;
- “Nasdaq” are to The Nasdaq Capital Market;
- “NAV” are to net asset value;
- “PIPE Investors” are to the qualified institutional buyers and accredited investors, including Sponsor or its affiliates, that have agreed to purchase shares of Vivid Seats Class A common stock in the PIPE Subscription;
- “PIPE Subscription” are to the issuance and sale of shares of Vivid Seats Class A common stock to the PIPE Investors in a private placement that will close concurrently with the Closing;
- “Private Equity Owner” are to, collectively, GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP, GTCR Golder Rauner, L.L.C., GTCR Golder Rauner II, L.L.C., GTCR Management XI LLC and GTCR LLC;
- “private placement units” are to the units of Horizon issued to Sponsor in a private placement simultaneously with the closing of the IPO;
- “public shareholders” are to the holders of Horizon’s public shares;
- “public shares” are to Horizon Class A ordinary shares sold as part of the units in the IPO (whether they were purchased in the IPO or thereafter in the open market);
- “Registration Rights Agreement” are to that certain Amended and Restated Registration Rights Agreement to be entered into by and among Vivid Seats PubCo, Sponsor, Hoya Topco and the other holders party thereto;
- “Reorganization Transaction” are to a Reorganization Transaction as defined in the Tax Receivable Agreement;
- “Sponsor” are to Horizon Sponsor, LLC, a Delaware limited liability company;
- “Sponsor Agreement” are to that certain Sponsor Agreement, dated as of April 21, 2021, by and among Eldridge Industries, LLC, Sponsor, Horizon and Hoya Topco;
- “Stockholders’ Agreement” are to that certain Stockholders’ Agreement to be entered into by and among Vivid Seats PubCo, Sponsor and Hoya Topco;

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- “Tax Receivable Agreement” are to that certain Tax Receivable Agreement to be entered into by and among Vivid Seats PubCo, Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders;
- “Topco Equityholders” are to (a) Hoya Topco or (b) after the distribution (in the aggregate pursuant to one or more distributions) by Hoya Topco of more than 50% of the voting shares of Vivid Seats PubCo held by Hoya Topco on the Closing Date, (i) GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP, GTCR Golder Rauner, L.L.C., GTCR Golder Rauner II, L.L.C., GTCR Management XI LLC and/or GTCR LLC and (ii) any investment vehicles or funds managed or controlled, directly or indirectly, by or otherwise affiliated with the foregoing entities;
- “Total Marketplace orders” are to the volume of Marketplace segment orders placed on the Vivid Seats platform during a period, net of event cancellations occurring during the period;
- “Total Resale orders” are to the volume of Resale segment orders sold by the Vivid Seats’ resale team in a period, net of event cancellations that occurred during that period;
- “TRA Holder Representative” are to GTCR Management XI, LLC;
- “TRA Holders” are to the TRA Holders as defined in the Tax Receivable Agreement;
- “Transactions” means the PIPE Subscription and the business combination;
- “Transaction Agreement” are to the Transaction Agreement, dated as of April 21, 2021, by and among Horizon, Sponsor, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo;
- “Trust Account” are to the trust account for the benefit of Horizon, certain of its public shareholders and the underwriter of the IPO;
- “Trust Agreement” are to that certain Investment Management Trust Agreement, dated as of August 25, 2020, between Horizon and Continental Stock Transfer & Trust Company, as trustee;
- “Trust Amount” are to the amount of cash available in the Trust Account as of the Closing, after deducting the amount required to satisfy Horizon’s obligations to its shareholders (if any) that exercise their redemption rights;
- “units” are to Horizon’s units sold in the IPO, each of which consists of one Horizon Class A ordinary share and one third of one Horizon Public IPO Warrant;
- “Vivid Seats” are to, prior to the consummation of the business combination, Hoya Intermediate and its consolidated subsidiaries and, following the consummation of the business combination, to Vivid Seats PubCo and its consolidated subsidiaries;
- “Vivid Seats Class A common stock” are to Vivid Seats PubCo’s Class A common stock, par value \$0.0001 per share;
- “Vivid Seats Class B common stock” are to Vivid Seats PubCo’s Class B common stock, par value \$0.0001;
- “Vivid Seats Companies” are to Hoya Intermediate and its subsidiaries;
- “Vivid Seats PubCo” are to Vivid Seats Inc., a Delaware corporation;
- “Vivid Seats PubCo \$10.00 Exercise Warrants” are to warrants for Vivid Seats Class A common stock with an exercise price of \$10.00, to be issued in exchange for the Horizon \$10.00 Exercise Warrants, with terms consistent with the Form of New Warrant Agreement to be entered into in connection with the business combination;
- “Vivid Seats PubCo \$15.00 Exercise Warrants” are to warrants for Vivid Seats Class A common stock with an exercise price of \$10.00, to be issued in exchange for the Horizon \$15.00 Exercise Warrants, with terms consistent with the Form of New Warrant Agreement to be entered into in connection with the business combination;

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- “Vivid Seats PubCo Amended and Restated Bylaws” are to the amended and restated bylaws of Vivid Seats PubCo that will be in effect immediately prior to the Effective Time;
- “Vivid Seats PubCo Amended and Restated Charter” are to the amended and restated certificate of incorporation of Vivid Seats PubCo that will be in effect immediately prior to the Effective Time;
- “Vivid Seats PubCo Class B Warrants” are to warrants for Vivid Seats Class B common stock, to be exercisable upon the exercise of Hoya Intermediate Warrants held by Hoya Topco;
- “Vivid Seats PubCo common stock” are to the Vivid Seats Class A common stock and the Vivid Seats Class B common stock, collectively;
- “Vivid Seats PubCo Warrants” are to the warrants for Vivid Seats Class A common stock and Vivid Seats Class B common stock;
- “Vivid Seats Private Placement IPO Warrants” are to warrants for Vivid Seats Class A common stock, with terms identical to the Horizon IPO Private Placement Warrants;
- “Vivid Seats Public IPO Warrants” are to warrants for Vivid Seats Class A common stock, with terms identical to Horizon IPO Public Warrants; and
- “Warrant Amendment” are to the proposed amendment and restatement of the Warrant Agreement in the form attached hereto as *Annex M*.

Unless otherwise specified, the voting and economic interests of Horizon shareholders set forth in this proxy statement/prospectus/consent solicitation statement assume that (i) no public shareholders elect to have their public shares redeemed; (ii) there are no other issuances of equity interests of Horizon, and (iii) the Vivid Seats PubCo Warrants remain outstanding immediately following the Closing.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this proxy statement/prospectus/consent solicitation statement may constitute “forward-looking statements” for purposes of the federal securities laws. Forward-looking statements include, but are not limited to, statements regarding Horizon or its management team’s — or Vivid Seats or its management team’s — expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this proxy statement/prospectus/consent solicitation statement may include, for example, statements about:

- Horizon’s or Vivid Seats’ ability to consummate the business combination or, if Horizon does not complete the business combination, any other initial business combination;
- the benefits of the business combination;
- any other satisfaction or waiver (if applicable) of the conditions to the business combination, including, among other things: the satisfaction or waiver of certain customary closing conditions, including, among others, the existence of no material adverse effect at Horizon or Vivid Seats and receipt of certain stockholder approvals contemplated by this proxy statement/prospectus/consent solicitation statement;
- the occurrence of any other event, change or other circumstances that could give rise to the termination of the Transaction Agreement;
- the ability to obtain the listing of Vivid Seats PubCo’s Class A common stock and warrants on Nasdaq following the business combination;
- Horizon’s and Vivid Seats PubCo’s public securities’ potential liquidity and trading;
- the ability of Horizon and Vivid Seats to consummate the PIPE Subscription or raise financing in the future;
- the ability to obtain equity treatment for the Horizon IPO Warrants based on the proposed Warrant Amendment;
- members of Horizon’s management team allocating their time to other businesses and potentially having conflicts of interest with Horizon’s business or in approving the business combination;
- the use of proceeds not held in the Trust Account or available to Horizon from interest income on the Trust Account balance;
- the future financial performance of Vivid Seats following the business combination;
- Vivid Seats’ success in retaining or recruiting, or changes required in, its officers, key employees or directors following the business combination;
- Vivid Seats’ ability to pay dividends on the Vivid Seats Class A common stock following the business combination, on the terms currently contemplated or at all;
- factors relating to the business, operations and financial performance of Vivid Seats, including, but not limited to:
  - the impact of the COVID-19 pandemic on Vivid Seats’ business and the industries in which it operates;
  - the ability of Vivid Seats to compete in the ticketing industry;
  - the ability of Vivid Seats to maintain relationships with buyers, sellers and distribution partners;

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- the ability of Vivid Seats to continue to improve its platform and maintain and enhance its brand;
- the impact of extraordinary events or adverse economic conditions on discretionary consumer and corporate spending or on the supply and demand of live events;
- the ability of Vivid Seats to comply with domestic regulatory regimes;
- the ability of Vivid Seats to successfully defend against litigation;
- the ability of Vivid Seats to maintain the integrity of its information systems and infrastructure, and to mitigate possible cyber security risks;
- the ability of Vivid Seats to generate sufficient cash flows or raise additional capital necessary to fund its operations; and
- other factors detailed under the section entitled “Risk Factors.”

These forward-looking statements are based on information available as of the date of this proxy statement/prospectus and current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties. Accordingly, forward-looking statements should not be relied upon as representing the views of Horizon or Vivid Seats as of any subsequent date, and neither Horizon nor Vivid Seats undertakes any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

You should not place undue reliance on these forward-looking statements in deciding how to grant your proxy or instruct how your vote should be cast on the proposals set forth in this proxy statement/prospectus/consent solicitation statement. As a result of a number of known and unknown risks and uncertainties, actual results or performance of Horizon or Vivid Seats may be materially different from those expressed or implied by these forward-looking statements.



## SUMMARY TERM SHEET

This Summary Term Sheet, together with the sections entitled “Questions and Answers About the Proposals for Horizon Shareholders” and “Summary of the Proxy Statement/Prospectus/Consent Solicitation Statement,” summarizes certain information contained in this proxy statement/prospectus/consent solicitation statement, but does not contain all of the information that is important to you. You should read carefully this entire proxy statement/prospectus/consent solicitation statement, including the attached annexes, for a more complete understanding of the matters to be considered at the extraordinary general meeting of Horizon shareholders.

- Horizon Acquisition Corporation, a Cayman Islands exempted company (“Horizon”), is a blank check company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses (an “initial business combination”).
- There are currently (a) 54,398,433 Horizon Class A ordinary shares issued and outstanding, of which 15,500,000 Horizon Class A ordinary shares are held by the Sponsor, (b) 13,599,608 Horizon Class B ordinary shares issued and outstanding, all of which are held by Sponsor and (c) 1,000,000 preference shares of par value \$0.0001 each, of which no shares are issued and outstanding. In addition, there are currently 24,652,580 warrants of Horizon outstanding, consisting of 18,132,811 Horizon IPO Public Warrants originally issued in the IPO, of which 5,166,666 Horizon IPO Public Warrants are held by Sponsor, and 6,519,791 Horizon IPO Private Placement Warrants issued to Sponsor concurrently with the IPO in the private placement. Each whole warrant entitles the holder to purchase one whole share of Horizon Class A ordinary shares for \$11.50 per share. The warrants will become exercisable on the later of the date that is (i) thirty (30) days after the Closing and (ii) twelve (12) months after the closing of the IPO. Additionally, the warrants will expire five years after the Closing or earlier upon redemption or liquidation. The Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants will be exchanged for the Vivid Seats Public IPO Warrants and Vivid Seats Private Placement IPO Warrants with substantially similar terms upon consummation of the Transactions. Once the Vivid Seats Public IPO Warrants and Vivid Seats Private Placement IPO Warrants become exercisable, Vivid Seats PubCo may redeem them, in whole and not in part, (A) for cash at a price of \$0.01 per warrant, if the last reported sale price of Vivid Seats Class A common stock for any twenty (20) trading days equals or exceeds \$18.00 per share within a thirty (30) trading-day period ending on the third trading day prior to the date on which Vivid Seats PubCo sends the notice of redemption to the warrant holders or (B) for Vivid Seats Class A common stock at a price of \$0.10 per warrant, if the last reported sale price of Vivid Seats Class A common stock for any twenty (20) trading days equals or exceeds \$18.00 per share within a thirty (30) trading-day period ending on the third trading day prior to the date on which Vivid Seats PubCo sends the notice of redemption to the warrant holders.
- Pursuant to the Exchange Agreement, dated as of April 21, 2021, by and between Horizon and Sponsor (the “Exchange Agreement”), and effective at least one day prior to the Merger, Sponsor will irrevocably tender to Horizon all of its Horizon Class B ordinary shares for cancellation in exchange for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth therein (collectively, the “Exchange”). The Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants shall be issued to Sponsor on terms set forth in the Form of New Warrant Agreement, including that, the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants (i) will have an exercise price of \$10.00 per share and \$15.00 per share, respectively, (ii) will each have a term of ten (10) years, (iii) will not be redeemable by Horizon or, upon conversion to Vivid Seats PubCo Warrants, Vivid Seats PubCo, and (iv) will be fully transferrable, except for any contractual restrictions on transfer set forth in the Stockholders’ Agreement and the Sponsor Agreement. For more information about Horizon, see the sections entitled “Other Information Related to Horizon” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations of Horizon.”

- Vivid Seats is a leading full-service ticketing marketplace enabling fans and event seekers to purchase tickets to sports, concerts, theater and other live events. For more information regarding Vivid Seats, see the section entitled “Business of Vivid Seats.”
- On April 21, 2021, Horizon entered into the Transaction Agreement, pursuant to which: (a) at least one day prior to the Merger, Sponsor and Horizon will effect the Exchange, (b) prior to the Merger, Hoya Topco and Vivid Seats will effect the Pre-Closing Restructuring (as defined in the Transaction Agreement), which will include (i) the redemption by Hoya Topco of 100% of the outstanding Class A Units of Hoya Topco (the “Class A Redemption”) held by the Crescent Holders in exchange for common units of Hoya Intermediate and (ii) the formation of a new subsidiary of Hoya Topco, which will merge with and into Hoya Intermediate (the “Intermediate Merger”), pursuant to which, among other things, Hoya Intermediate will recapitalize its existing common units, preferred units and senior preferred units such that each existing common unit will be converted into a certain number of new Intermediate Common Units (and, in the case of common units held by Hoya Topco, 118,200,000 Intermediate Common Units and Hoya Intermediate Warrants consisting of (i) warrants to purchase 3,000,000 Intermediate Common Units at an exercise price of \$10.00 per share and (ii) warrants to purchase 3,000,000 Intermediate Common Units at an exercise price of \$15.00 per share), each existing preferred unit will be converted into a Class I Unit of Hoya Topco and each existing senior preferred unit will be cancelled and cease to exist, (c) Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving entity in the Merger, (d) the Amended and Restated Limited Liability Agreement of Hoya Intermediate, dated as of June 30, 2017, as amended, will be amended and restated in the form attached to this proxy statement/prospectus as *Annex J* (the “Second A&R LLCA”), (e) Vivid Seats PubCo will purchase the Crescent Blockers in the Blocker Purchase, (f) Vivid Seats PubCo and Hoya Intermediate will consummate the Intermediate Contribution and Issuance, which contribution includes Vivid Seats PubCo’s contribution of cash to Hoya Intermediate in an amount equal to (A) all available cash of Vivid Seats PubCo following the Merger and the PIPE Subscription, *minus* (B) the Blocker Purchase Price, *minus* (C) the Blocker Tax Liabilities, (g) Hoya Intermediate will redeem the Intermediate Common Units held by the Redeemed Crescent Parties in the Crescent Redemption, (h) Vivid Seats PubCo will issue 118,200,000 shares of Vivid Seats Class B common stock and 6,000,000 warrants to purchase Vivid Seats Class B common stock to Hoya Topco in the Class B Issuance and (i) Hoya Intermediate will contribute a portion of the funds received from Vivid Seats PubCo to Hoya Midco. Immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units, resulting in a cash payment of \$225.1 million. Upon the Closing, Vivid Seats expects to apply \$488.9 million of the business combination and PIPE Subscription proceeds towards debt repayments resulting in the full repayment of its May 2020 First Lien Loan and a partial repayment of its June 2017 First Lien Loan.
- In connection with the execution of the Transaction Agreement, Horizon entered into the following agreements:
  - **PIPE Subscription Agreements.** Horizon and Vivid Seats PubCo entered into the subscription agreements (the “Subscription Agreements”) with the PIPE Investors, pursuant to which the PIPE Investors have agreed to subscribe for and purchase, an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million; provided, however, such subscription is subject to increase due to Sponsor Backstop Commitment (as defined below). Eldridge Industries, LLC, an affiliate of Sponsor, has agreed to purchase 19,000,000 shares of Vivid Seats Class A Common Stock in a private placement for a purchase price of \$10.00 per share in the PIPE Subscription. The Subscription Agreements provide that Vivid Seats PubCo will grant the investors in the PIPE Subscription certain customary registration rights. Vivid Seats PubCo will, within 30 days after the consummation of the business combination, file with the Securities and Exchange Commission (the “SEC”) a registration statement registering the resale of such shares of Vivid Seats Class A Common Stock and will use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. The closing of the PIPE Subscription is contingent upon, among other things, the substantially concurrent consummation of the business combination. For more information about the Subscription Agreements, see the

section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — PIPE Subscription Agreements.”

- **Sponsor Agreement.** Horizon entered into a sponsor agreement with Eldridge Industries, LLC, Sponsor and Hoya Topco (the “Sponsor Agreement”), pursuant to which Sponsor agreed to vote in favor of the Proposals, in each case, subject to the terms and conditions contemplated by the Sponsor Agreement. Sponsor also agreed to (a) waive certain anti-dilution protections it may be entitled to under Horizon’s organizational documents or otherwise, (b) certain transfer restrictions on the Horizon ordinary shares and Horizon Warrants beneficially owned by Sponsor and its affiliates, (c) not to solicit any business combination other than the business combination with Hoya Topco, in each case, subject to limited exceptions as contemplated thereby and (d) increase the amount of its subscription of shares of Vivid Seats Class A common stock by the amount the available cash held by Vivid Seats PubCo at the closing of the business combination is less than approximately \$769 million (the “Sponsor Backstop Commitment”), in consideration for a fee of approximately \$11.7 million. For more information about the Sponsor Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Sponsor Agreement.”
- In connection with the Closing, Vivid Seats PubCo will enter into, among others, the following agreements:
  - **Vivid Seats PubCo Amended and Restated Charter.** Pursuant to the terms of the Transaction Agreement, the Vivid Seats PubCo Amended and Restated Charter will be the certificate of incorporation of Vivid Seats PubCo following the Closing, which will, among other things, provide for three classes of stock, the Vivid Seats Class A common stock, which will be issued to Sponsor, the PIPE Investors and the other public shareholders of Vivid Seats PubCo in connection with the Closing, the Vivid Seats Class B common stock, which will be issued to Hoya Topco in connection with the Class B Issuance and preferred stock, none of which will be outstanding immediately following the Closing. For more information about the Vivid Seats PubCo Amended and Restated Charter, see section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Vivid Seats PubCo Amended and Restated Charter.”
  - **Second A&R LLCA.** At the Closing, Hoya Intermediate, Vivid Seats PubCo and Hoya Topco will enter into the Second A&R LLCA, which will set forth, among other things, the rights and obligations of the members and board of managers of Hoya Intermediate. For more information about the Second A&R LLCA, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Second A&R LLCA.”
  - **Registration Rights Agreement.** At the Closing, Vivid Seats PubCo, Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement, dated as of August 25, 2020, by and between Horizon and the Sponsor. Pursuant to the Registration Rights Agreement, Vivid Seats PubCo will agree to file a registration statement for a shelf registration on Form S-1 or Form S-3 within 30 days following Closing and Sponsor and Hoya Topco will be granted certain customary registration rights with respect to the securities of Vivid Seats PubCo. For more information about the Registration Rights Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Registration Rights Agreement.”
  - **Stockholders’ Agreement.** The Transaction Agreement contemplates that, at the Closing, Vivid Seats PubCo will enter into a Stockholders’ Agreement with Sponsor and Hoya Topco, pursuant to which, among other things, the board of directors of Vivid Seats PubCo (the “Vivid Seats Board”) will consist of nine (9) directors, comprised of (i) the chief executive officer of Vivid Seats PubCo, (ii) five (5) directors designated by the Topco Equityholders (as defined herein) and (iii) three (3) directors designated by the Horizon Equityholders (as defined herein). Additionally, the Stockholders’ Agreement contains certain restrictions on transfer with respect to lock-up shares held by Sponsor and Hoya Topco, including a twelve (12) month lock-up of such shares in

each case, subject to limited exceptions as contemplated thereby (including that Sponsor and Hoya Topco may each transfer: (a) fifty percent (50%) of their lock-up shares on the date that is six (6) months following the Closing Date and (b) the remaining lock-up shares on any date, at least six (6) months after the Closing, on which (i) the price per lock-up share exceeds \$15.00 per share for twenty (20) trading days within a thirty (30) day trading period and (ii) the average daily trading volume exceeds one (1) million shares of Vivid Seats PubCo common stock during such thirty (30) trading day period). The Stockholders' Agreement also contains certain provisions intended to maintain, following the consummation of the business combination, Vivid Seats PubCo's qualification as a "controlled company" within the meaning of Nasdaq Listing Rule 5615(c)(1). For more information about the Stockholders' Agreement, see the section entitled "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Stockholders' Agreement."

- **Tax Receivable Agreement.** The Transaction Agreement contemplates that, at the Closing, Vivid Seats PubCo will enter into a Tax Receivable Agreement with Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders. Pursuant to the Tax Receivable Agreement, Vivid Seats PubCo will generally be required to pay Hoya Topco and the other TRA Holders 85% of the amount of savings, if any, in U.S. federal, state, local, and foreign taxes that are based on, or measured with respect to, net income or profits, and any interest related thereto that Vivid Seats PubCo (and applicable consolidated, unitary, or combined subsidiaries thereof, if any and collectively the "Tax Group") realizes, or is deemed to realize, as a result of certain tax attributes (the "Tax Attributes"), including:
  - existing tax basis in certain assets of Hoya Intermediate and certain of its direct or indirect subsidiaries, including assets that will eventually be subject to depreciation or amortization, once placed in service;
  - tax basis adjustments resulting from taxable exchanges of Intermediate Common Units (including any such adjustments resulting from certain payments made by Vivid Seats PubCo under the Tax Receivable Agreement) acquired by Vivid Seats PubCo from a TRA Holder pursuant to the terms of the Second A&R LLCA;
  - certain tax attributes of Blocker Corporations holding Intermediate Common Units that are acquired directly or indirectly by Vivid Seats PubCo pursuant to a Reorganization Transaction;
  - certain tax benefits realized by Vivid Seats PubCo as a result of certain U.S. federal income tax allocations of taxable income or gain away from Vivid Seats PubCo and to other members of Hoya Intermediate and deductions or losses to Vivid Seats PubCo and away from other members of Hoya Intermediate, in each case, as a result of the business combination; and
  - tax deductions in respect of portions of certain payments made under the Tax Receivable Agreement.

For more information about the Tax Receivable Agreement, see the section entitled "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Tax Receivable Agreement."

- Unless waived by the parties to the Transaction Agreement, the Closing is subject to a number of conditions set forth in the Transaction Agreement, including, among others, receipt of the requisite stockholder approval of the Transaction Agreement, Plan of Merger and the Merger and the other Proposals as contemplated by this proxy statement/prospectus/consent solicitation statement. For more information about the closing conditions to the business combination, see the section entitled "Proposal No. 1— The Business Combination Proposal — The Transaction Agreement — Conditions to the Closing of the Business Combination."
- The Transaction Agreement may be terminated at any time prior to the Closing upon agreement by Hoya Topco and Horizon, or by Hoya Topco or Horizon, acting alone, in specified circumstances. For

more information about the termination rights under the Transaction Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Termination.”

- The proposed business combination involve numerous risks. For more information about these risks, please read “Risk Factors.”
- Under Horizon’s amended and restated memorandum and articles of association, holders of public shares may elect to have their shares redeemed for cash at the applicable redemption price per share calculated in accordance with Horizon’s amended and restated memorandum and articles of association. As of December 31, 2020, this would have amounted to approximately \$10.00 per share. If a holder exercises its redemption rights, then such holder will be exchanging its Horizon Class A ordinary shares for cash and will no longer own shares of Horizon. Such a holder will be entitled to receive cash for its public shares only if it properly demands redemption and delivers its shares (either physically or electronically) to our transfer agent in accordance with the procedures described herein. Notwithstanding the foregoing, a holder of the public shares, together with any affiliate of his or any other person with whom he is acting in concert or as a “group” (as defined in Section 13(d)(3) of the Exchange Act), will be restricted from seeking redemption rights with respect to more than 15% of the Horizon Class A ordinary shares included in the units sold in the IPO, which we refer to as the “15% threshold.” Accordingly, all public shares in excess of the 15% threshold beneficially owned by a public shareholder or group will not be redeemed for cash. Each redemption of Horizon Class A ordinary shares by Horizon’s public shareholders will decrease the amount in the Trust Account, which holds approximately \$544 million as of December 31, 2020. In no event will Horizon redeem public shares in an amount that would cause its net tangible assets to be less than \$5,000,001. See the section entitled “Extraordinary General Meeting of Horizon Shareholders — Redemption Rights.”
- It is anticipated that, upon completion of the business combination and assuming no redemptions of shares of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo’s ownership will be as follows: (a) Horizon’s public shareholders will own approximately 19.9% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (b) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of the Sponsor, will own approximately 1.8% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (c) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (d) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo’s shareholders through Hoya Topco’s ownership of approximately 60.6% of the voting power of Vivid Seats PubCo’s outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders’ Agreement. In turn, Vivid Seats PubCo will hold approximately 39.4% of the Intermediate Common Units and Hoya Topco will hold approximately 60.6% of the Intermediate Common Units, which interests will be controlled by the Private Equity Owner for so long as it controls Hoya Topco. These levels of ownership interest assume that no shares are elected to be redeemed in connection with the business combination. The PIPE Investors have agreed to purchase in the aggregate 22,500,000 shares of Vivid Seats Class A common stock, for approximately \$225.0 million of gross proceeds, in the PIPE Subscription. In this proxy statement/prospectus/consent solicitation statement, Horizon assumes that approximately \$769.0 million of the gross proceeds from the PIPE Subscription and funds held in the Trust Account will be used to fund (i) the business combination, (ii) the partial repayment of our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of approximately \$132.1 million under both the no redemption scenario and maximum redemption scenario, and (iii) the payment of certain transaction

expenses. The ownership percentage with respect to Vivid Seats PubCo does not take into account (A) warrants to purchase Horizon Class A ordinary shares that will be converted into Vivid Seats PubCo Warrants immediately following the business combination or other Vivid Seats PubCo Warrants issued in connection with the business combination or (B) the issuance of any shares upon completion of the business combination under the 2021 Plan. If the actual facts are different from these assumptions, the above levels of ownership interest will be different.

- It is anticipated that, upon completion of the business combination, (a) Horizon’s public shareholders will own 12,966,144 Vivid Seats Public IPO Warrants and (b) Sponsor will own 5,166,666 Vivid Seats Public IPO Warrants (and does not include the Horizon \$10.00 Exercise Warrants, the Horizon \$15.00 Exercise Warrants and the Vivid Seats Private Placement IPO Warrants). Pursuant to the Exchange Agreement, Sponsor will receive (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth therein. Horizon’s public shareholders and warrant holders will receive no monetary consideration in connection with the completion of the business combination. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of Horizon ordinary shares or warrant of Horizon, (i) each Horizon ordinary share that is issued and outstanding immediately prior to the Effective Time (other than any Horizon ordinary shares held in the treasury of Horizon) will be cancelled and converted into one share of Vivid Seats Class A common stock and (ii) each Horizon Warrant that is issued and outstanding immediately prior to the Effective Time will be converted into a corresponding Vivid Seats PubCo Warrant exercisable for one share of Vivid Seats Class A common stock at an exercise price set forth in the applicable warrant agreement. Based on an assumed value of a share of Vivid Seats Class A common stock of \$10.00 and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, the aggregate value of consideration holders of Horizon ordinary shares will receive for their shares pursuant to the business combination is approximately \$389 million. Holders of Horizon’s Warrants will receive Vivid Seats PubCo Warrants that will have an exercise price of \$11.50 per share; however, depending on the price of Vivid Seats Class A common stock following the business combination, such warrants may have no value and may expire worthless or otherwise be redeemed in accordance with their terms.
- Horizon’s board of directors considered various factors in determining whether to approve the Transaction Agreement and the business combination. For more information about Horizon’s decision-making process, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Horizon’s Board of Directors’ Reasons for the Approval of the Business Combination.”
- In addition to voting on the proposal to approve and adopt the Transaction Agreement and the business combination (the “Business Combination Proposal”) at the extraordinary general meeting, Horizon’s shareholders will also be asked to vote on:
  - a proposal (the “Merger Proposal”) to approve, as a special resolution, the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* and to authorize the merger (the “Merger”) of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation (the “Surviving Corporation”);
  - the following three separate proposals (collectively, the “Organizational Documents Proposals”) to approve the following material differences between Horizon’s amended and restated memorandum and articles of association and the amended and restated certificate of incorporation of Vivid Seats PubCo (the “Vivid Seats PubCo Amended and Restated Charter”) and the amended and restated bylaws of Vivid Seats PubCo (the “Vivid Seats PubCo Amended and Restated



Bylaws”) that will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger:

- a proposal to authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, par value \$0.0001 per share (the “Horizon Class A ordinary shares”), 40,000,000 shares of Horizon Class B ordinary shares, par value \$0.0001 per share (the “Horizon Class B ordinary shares”), and 1,000,000 preference shares, par value \$0.0001 per share, to 500,000,000 shares of Class A common stock, par value \$0.0001 per share, of Vivid Seats PubCo (the “Vivid Seats Class A common stock”), 250,000,000 shares of Class B common stock, par value \$0.0001 per share, of Vivid Seats PubCo (the “Vivid Seats Class B common stock”) and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo;
- a proposal to authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders’ Agreement; and
- a proposal to authorize that the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will grant an explicit waiver regarding corporate opportunities to certain “exempted persons” (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo);
- a proposal to authorize that the Vivid Seats PubCo Amended and Restated Charter will adopt Delaware as the exclusive forum for certain stockholder litigation;
- a proposal to authorize all other changes in connection with the replacement of Horizon’s amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from “Horizon Acquisition Corporation” to “Vivid Seats Inc.,” (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon’s status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon’s board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination;
- a proposal to approve, for purposes of complying with NYSE Listing Rule 312.03, the issuance of shares of Vivid Seats PubCo in connection with the business combination and the PIPE Subscription (the “NYSE Proposal”); and
- a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal (the “Adjournment Proposal” and, together with the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal, the “Proposals”).

For more information, see the sections entitled “Proposal No. 2 — the Merger Proposal,” “Proposal No. 3 — Organizational Documents Proposal A,” “Proposal No. 4 — Organizational Documents Proposal B,” “Proposal No. 5 — Organizational Documents Proposal C,” “Proposal No. 6 — Organizational Documents Proposal D,” “Proposal No. 7 — Organizational Documents Proposal E,” “Proposal No. 8 — The NYSE Proposal” and “Proposal No. 9 — The Adjournment Proposal.”

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In addition to the proposals to be considered by Horizon’s shareholders, the holders of Horizon IPO Warrants, including holders of Horizon Units that have not separated the Horizon IPO Public Warrants included therein, are being asked to consider the proposed amendment and restatement of the Warrant Agreement described in this proxy statement/prospectus/consent solicitation statement, to which you should give your careful attention. If you elect to provide your consent to the Warrant Amendment, holders are required to complete, sign and return a Written Consent (or request that their broker or nominee consent on their behalf) with respect to the Warrant Amendment. The Warrant Amendment, if adopted and as of the time of such adoption, would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation. For more information, see the section entitled “Horizon’s Solicitation of Written Consents”.

## QUESTIONS AND ANSWERS ABOUT THE PROPOSALS FOR HORIZON SHAREHOLDERS

*The following questions and answers briefly address some commonly asked questions about the proposals to be presented at the extraordinary general meeting of shareholders of Horizon Acquisition Corporation (“Horizon”), including the proposed business combination. The following questions and answers also briefly address some commonly asked questions about the consent under consideration by the holders of Horizon IPO Warrants with respect to a proposed amendment and restatement of the Warrant Agreement. The following questions and answers do not include all the information that is important to Horizon shareholders and holders of Horizon IPO Warrants. Horizon shareholders and holders of Horizon IPO Warrants are encouraged to read carefully this entire proxy statement/prospectus/consent solicitation statement, including the annexes and other documents referred to herein.*

**Q: Why am I receiving this proxy statement/prospectus/consent solicitation statement?**

**A:** Horizon shareholders are being asked to consider and vote upon, among other things, a proposal to (a) approve and adopt the Transaction Agreement, pursuant to which, among other transactions, Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will be the surviving corporation, and (b) approve such Merger and the other transactions contemplated by the Transaction Agreement (the “Business Combination Proposal”).

A copy of the Transaction Agreement is attached to this proxy statement/prospectus/consent solicitation statement as *Annex A*. This proxy statement/prospectus/consent solicitation statement and its annexes contain important information about the proposed business combination and the other matters to be acted upon at the extraordinary general meeting. You should read this proxy statement/prospectus/consent solicitation statement and its annexes carefully and in their entirety.

Your vote is important. You are encouraged to submit your proxy as soon as possible after carefully reviewing this proxy statement/prospectus/consent solicitation statement and its annexes.

In addition, the holders of Horizon IPO Warrants are being asked to consider the proposed amendment and restatement of the Warrant Agreement in the form of the Warrant Amendment, which is attached to this proxy statement/prospectus/consent solicitation statement as *Annex M*. If you elect to provide your consent to the Warrant Amendment, holders are required to complete, sign and return a Written Consent (or request that their broker or nominee consent on their behalf) with respect to the Warrant Amendment. For additional detail regarding the Warrant Amendment and the Written Consent, please see the section entitled “Horizon’s Solicitation of Written Consents.”

**Q: What is being voted on at the extraordinary general meeting?**

**A:** Below are the proposals on which Horizon shareholders will vote at the extraordinary general meeting.

1. **Proposal No. 1 — The Business Combination Proposal** — To consider and vote upon a proposal to (a) approve and adopt the Transaction Agreement pursuant to which, among other transactions, Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation, and (b) approve the business combination.
2. **Proposal No. 2 — The Merger Proposal** — To consider and vote upon a proposal to approve, as a special resolution, the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* and to authorize the merger of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation.
3. **The Organizational Documents Proposals** — To consider and vote upon the following three separate proposals to approve the following material differences between Horizon amended and restated

memorandum and articles of association and the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws that will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger:

- i. **Proposal No. 3 — Organizational Documents Proposal A** — To authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, 40,000,000 shares of Horizon Class B ordinary shares, and 1,000,000 preference shares, par value \$0.0001 per share, to 500,000,000 shares of Vivid Seats Class A common stock, 250,000,000 shares of Vivid Seats Class B common stock and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo.
  - ii. **Proposal No. 4 — Organizational Documents Proposal B** — To authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders' Agreement.
  - iii. **Proposal No. 5 — Organizational Documents Proposal C** — To authorize that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain "exempted persons" (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo);
  - iv. **Proposal No. 6 — Organizational Documents Proposal D** — To authorize that the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats Amended and Restated Bylaws will adopt Delaware as the exclusive forum for certain stockholder litigation;
  - v. **Proposal No. 7 — Organizational Documents Proposal E** — To authorize all other changes in connection with the replacement of Horizon's amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from "Horizon Acquisition Corporation" to "Vivid Seats Inc.," (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon's status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon's board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination.
2. **Proposal No. 8 — The NYSE Proposal** — To consider and vote upon a proposal to approve, for purposes of complying with NYSE Listing Rule 312.03, the issuance of shares of Vivid Seats PubCo in connection with the business combination and the PIPE Subscription (the "NYSE Proposal"); and
  3. **Proposal No. 9 — The Adjournment Proposal** — To consider and vote upon a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal.

**Q: What happens if a substantial number of the public shareholders vote in favor of the Business Combination Proposal and exercise their redemption rights?**

**A:** Horizon's public shareholders may vote in favor of the business combination and still exercise their redemption rights. Accordingly, the business combination may be consummated even though the funds available from the Trust Account and the number of public shareholders are reduced as a result of

redemptions by public shareholders. The Transaction Agreement provides that the cash proceeds from the Trust Account and PIPE Subscription (collectively, the “Transaction Proceeds”) must be at least \$768,984,330.00. In the event that redemptions of Horizon Class A ordinary shares reduce the Transaction Proceeds to an amount below \$768,984,330.00, Sponsor shall increase its commitment to the PIPE Subscription by a corresponding amount (the “Sponsor Backstop Commitment”). In the event that redemptions of Horizon Class A ordinary shares reduce the Transaction Proceeds to an amount below \$380.0 million prior to consideration of the Sponsor Backstop Commitment, Sponsor is entitled to arrange for the purchase of additional shares of Horizon ordinary shares from third party investors at a price of \$10.00 per share with prior written consent of Hoya Topco. Accordingly, even if all public shareholders entitled to redemption elect to have their shares redeemed, the business combination may still occur.

Given that Sponsor has agreed to the Sponsor Backstop Commitment on a dollar-for-dollar basis, the pro forma total number of outstanding shares of Vivid Seats PubCo will remain the same in any redemption scenario. However, there will be a difference in the special dividend to be paid on the Closing Date. In the event that all of Horizon’s public shareholders choose to exercise their redemption rights, the dividend is expected to be approximately \$1.1290 per share, all of which will be paid to Sponsor as the only non-redeeming shareholder. In the event that 50% of Horizon’s public shareholders, excluding Sponsor, choose to exercise their redemption rights, the dividend is expected to be approximately \$0.5007 per share. In the event that no Horizon public shareholders choose to exercise their redemption rights, the dividend is expected to be approximately \$0.3217 per share.

Based on recent trading prices, the value of the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants are quantified based on the following table:

*Warrant Valuation (Black Scholes Model)*

Tenor Years	Strike Price	Discount	Vol	Value	Units held by Sponsor	Total Value
10	\$ 10.00	1.448%	27.191%	3.82	17,000,000	\$ 64,910,334
10	\$ 15.00	1.448%	27.191%	2.5	17,000,000	\$ 42,441,505

Additionally, given that Sponsor has agreed to the Sponsor Backstop Commitment, (i) there is no risk of dilution on the total outstanding shares, so the value of the Horizon \$10.00 Exercise Warrants or the Horizon \$15.00 Exercise Warrants will remain the same and (ii) the underwriting fees remain constant and are not adjusted based on redemptions.

In addition, in no event will we redeem public shares in an amount that would cause Horizon’s net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act) to be less than \$5,000,001. It is anticipated that, upon completion of the business combination and assuming no redemptions of shares of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo’s ownership will be as follows: (1) Horizon public shareholders will own approximately 19.9% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of Sponsor, will own approximately 1.8% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a “controlled company” within the meaning of applicable Nasdaq listing rules. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo’s

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shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement.

**Q: Are the proposals conditioned on one another?**

**A:** Yes. The Closing is conditioned on the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal at the extraordinary general meeting. The Organizational Documents Proposals are conditioned on the approval of the Business Combination Proposal, the Merger Proposal and the NYSE Proposal. The Adjournment Proposal is not conditioned on the approval of any other proposal set forth in this proxy statement/prospectus/consent solicitation statement.

**Q: Why is Horizon providing shareholders with the opportunity to vote on the business combination?**

**A:** Under Horizon's amended and restated memorandum and articles of association, Horizon must provide all holders of Horizon Class A ordinary shares with the opportunity to redeem their public shares upon the consummation of an initial business combination either in conjunction with a tender offer or in conjunction with a shareholder vote. For business and other reasons, Horizon has elected to provide its shareholders with the opportunity to have their public shares redeemed in connection with a shareholder vote rather than a tender offer. Therefore, Horizon is seeking to obtain the approval of its shareholders of the Business Combination Proposal in order to allow its public shareholders to effectuate redemptions of their public shares in connection with the Closing. The approval of Horizon's shareholders of the Business Combination Proposal is also a condition to closing in the Transaction Agreement. Holders of Horizon's warrants are not entitled to vote on the business combination. Under Horizon's amended and restated memorandum and articles of association, Horizon's warrants do not have redemption rights in connection with the business combination.

**Q: What will happen in the business combination?**

**A:** On April 21, 2021, Horizon, Sponsor, Vivid Seats PubCo, Hoya Topco and Hoya Intermediate entered into the Transaction Agreement, pursuant to which: (a) at least one day prior to the Merger, Sponsor and Horizon will effect the Exchange, (b) prior to the Merger, Hoya Topco and Vivid Seats will effect the Pre-Closing Restructuring (as defined in the Transaction Agreement), which will include the Class A Redemption and the Intermediate Merger, (c) Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving entity in the Merger, (d) the Second A&R LLCA will become effective, (e) Vivid Seats PubCo will purchase the Crescent Blockers in the Blocker Purchase, (f) Vivid Seats PubCo and Hoya Intermediate will consummate the Intermediate Contribution and Issuance, which contribution includes Vivid Seats PubCo's contribution of cash in an amount equal to (A) all available cash of Vivid Seats PubCo following the Merger and the PIPE Subscription, *minus* (B) the Blocker Purchase Price, *minus* (C) the Blocker Tax Liabilities, (g) Hoya Intermediate will redeem the Intermediate Common Units held by the Redeemed Crescent Parties in the Crescent Redemption, (h) Vivid Seats PubCo will issue 118,200,000 shares of Vivid Seats Class B common stock and 6,000,000 warrants to purchase Vivid Seats Class B common stock to Hoya Topco in the Class B Issuance, and (i) Hoya Intermediate will contribute a portion of the funds received from Vivid Seats PubCo. Immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units, resulting in a cash payment of \$225.1 million. Upon the Closing, Vivid Seats expects to apply \$488.9 million of the business combination and PIPE Subscription proceeds towards debt repayments resulting in the full repayment of its May 2020 First Lien Loan and a partial repayment of its June 2017 First Lien Loan.

A copy of the Transaction Agreement is attached to this proxy statement/prospectus/consent solicitation statement as *Annex A*. For more information about the Transaction Agreement and the business combination, see the section entitled "Proposal No. 1 — The Business Combination Proposal."

- Q: What factors did Horizon’s board of directors consider in connection with its decision to recommend voting in favor of the business combination?**
- A: Horizon’s board of directors considered a number of factors pertaining to the business combination as generally supporting its decision to enter into the Transaction Agreement and the transactions contemplated thereby, including, but not limited to, the following:**
- ***Strong Historical Financial Performance and Economic Model.*** Hoya Intermediate and Vivid Seats PubCo historically demonstrated strong financial performance and results of operations. Horizon’s board of directors took into account Vivid Seats’ historically strong Adjusted EBITDA margins and Adjusted EBITDA to free cash flow conversion rates, coupled with low capital expenditures and negative working capital;
  - ***Favorable Prospects for Future Growth and Financial Performance.*** Horizon’s board of directors considered current information and forecast projections from Horizon and Vivid Seats PubCo’s management regarding (i) Hoya Intermediate and Vivid Seats PubCo’s business, prospects, financial condition, operations, technology, products, services, management, competitive position, and strategic business goals and objectives, (ii) general economic, industry, regulatory and financial market conditions and (iii) opportunities and competitive factors within Hoya Intermediate and Vivid Seats PubCo’s industry; Among other factors, Horizon’s board of directors reviewed Vivid Seats PubCo’s management forecasted financials and key financial metrics underlying such projections, as well as Vivid Seats PubCo’s projected revenue year over year growth rate percentage over the period from 2022 (projected) through 2023 (projected), as well as enterprise value as a multiple of Adjusted EBITDA and as a multiple of revenue for estimated calendar year 2022 and estimated calendar year 2023. Based on its review, Horizon’s board of directors concluded that the estimated values for Vivid Seats PubCo represented attractive valuation relative to such estimated values of comparable companies. For further information, see “Proposal No. 1 — The Business Combination Proposal — Horizon’s Board of Directors’ Reasons for the Approval of the Business Combination — Comparable Company Analysis” and “Proposal No. 1 — The Business Combination Proposal — Horizon’s Board of Directors’ Reasons for the Approval of the Business Combination — Certain Forecasted Financial Information for Vivid Seats PubCo.” Horizon’s board of directors also considered general market conditions and Vivid Seats PubCo’s competitive position. There is a significant and growing market opportunity serving the sports and entertainment markets and Vivid Seats PubCo is well-positioned for both significant immediate growth in post-pandemic recovery and above-market long-term growth. For further information, see “The Business of Vivid Seats — Our Industry Opportunity” and “The Business of Vivid Seats — Our Strength”;
  - ***Differentiated Technology Platform.*** Vivid Seats PubCo’s best-in-class proprietary search algorithms focuses customer experience on event discovery and conversion and creates unique engine for generating new customers. The platform also presents what Horizon believes to be a leading enterprise resource planning (ERP) system for the seller community;
  - ***Compelling Valuation.*** The implied enterprise value in connection with the business combination is approximately \$2.0 billion, which Horizon’s board of directors believes represents an attractive valuation relative to selected comparable companies;
  - ***World Class Management Team.*** Hoya Intermediate and Vivid Seats PubCo’s experienced management team, led by Stanley Chia, Hoya Intermediate and Vivid Seats PubCo’s Chief Executive Officer, brings veteran leadership with highly relevant experience;
  - ***Potential for Future Accretive M&A.*** We believe that Hoya Intermediate and Vivid Seats PubCo are positioned as an attractive M&A platform opportunity as it continues to expand its offerings and geographic reach; and
  - ***Likelihood of Closing the Business Combination.*** The belief of the Horizon board of directors that an acquisition by Horizon has a reasonable likelihood of closing without potential issues under applicable antitrust and competition laws, or potential issues from any regulatory authorities.

**Q: What conditions must be satisfied to complete the business combination?**

**A:** There are a number of closing conditions in the Transaction Agreement, including the approval by Horizon’s shareholders of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal. For a summary of the conditions that must be satisfied or waived prior to completion of the business combination, see the section entitled “Proposal No. 1 — The Business Combination Proposal — The Transaction Agreement — Conditions to the Closing of the Business Combination.”

**Q: How will Vivid Seats PubCo be managed and governed following the business combination?**

**A:** The business and affairs of Vivid Seats PubCo will be managed under the direction of its board of directors. Following the Closing, the Vivid Seats Board will include nine (9) directors, one (1) of which will be the chief executive officer of Vivid Seats PubCo, five (5) of which will be designated by Hoya Topco (one (1) of which will be independent) and three (3) of which will be designated by Sponsor (two (2) of which will be independent). Subject to the terms of the Stockholders’ Agreement and the Vivid Seats PubCo Amended and Restated Charter, the number of directors will be fixed by the Vivid Seats Board. Please see the section entitled “Officers and Directors of Vivid Seats PubCo Upon Consummation of the Business Combination” for the names, ages and positions of each of the individuals who will serve as directors and officers of Vivid Seats PubCo following the business combination.

**Q: How will Hoya Intermediate be managed and governed following the business combination?**

**A:** The business and affairs of Hoya Intermediate will be managed under the direction of its board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco. For each matter presented to the board of managers of Hoya Intermediate, the Vivid Seats PubCo designee will be entitled to two (2) votes and the Hoya Topco designee will be entitled to one (1) vote. Immediately following the Closing, Vivid Seats PubCo’s Private Equity Owner will be able to designate the majority of the directors of the Vivid Seats Board and generally have control over the business and affairs of Vivid Seats PubCo. For more information regarding Vivid Seats PubCo’s Private Equity Owner’s controlling interest in Vivid Seats PubCo, see the section entitled “Risk Factors — Risks Related to Organizational Structure After the Business Combination — Vivid Seats PubCo’s Private Equity Owner will control us, and its interests may conflict with ours or yours in the future.”

**Q: Will Horizon obtain new financing in connection with the business combination?**

**A:** Horizon entered into the Subscription Agreements with the PIPE Investors, pursuant to which, subject to the consummation of the business combination, the PIPE Investors have agreed to purchase an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million; provided, however, that such subscription is subject to increase due to the Sponsor Backstop Commitment. The closings under the Subscription Agreements will occur after the Effective Time and substantially concurrently with the closing of the business combination. For more information about the Subscription Agreements, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — PIPE Subscription Agreements.”

**Q: What equity stake will current Horizon shareholders, the PIPE Investors, the holders of the founder shares and Hoya Topco hold in Vivid Seats PubCo following the consummation of the business combination?**

**A:** It is anticipated that, upon completion of the business combination and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo’s ownership will



be as follows: (1) Horizon public shareholders will own approximately 19.9% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors, (as defined herein), excluding Sponsor and certain affiliates of the Sponsor, will own approximately 1.8% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a "controlled company" within the meaning of Nasdaq rules. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo's shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement. In turn, Vivid Seats PubCo will indirectly hold approximately 39.4% of the Intermediate Common Units and Hoya Topco will hold approximately 60.6% of the Intermediate Common Units, which interests will be controlled by the Private Equity Owner for so long as it controls Hoya Topco. In addition, Vivid Seats PubCo will hold 58,652,601 Hoya Intermediate Warrants, exercisable upon the exercise of Vivid Seats PubCo Warrants. These levels of ownership interest assume that no shares are elected to be redeemed in connection with the business combination. The PIPE Investors have agreed to purchase an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million in the PIPE Subscription. In this proxy statement/prospectus/consent solicitation statement, Horizon assumes that approximately \$769.0 million of the gross proceeds from the PIPE Subscription and funds held in the Trust Account will be used to fund (i) the business combination, (ii) the partial repayment of our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of approximately \$132.1 million under both the no redemption scenario and maximum redemption scenario, and (iii) the payment of certain transaction expenses. The ownership percentage with respect to Vivid Seats PubCo does not take into account (A) warrants to purchase Horizon Class A ordinary shares that will be converted into Vivid Seats PubCo Warrants immediately following the business combination or other Vivid Seats PubCo Warrants issued in connection with the business combination or (B) the issuance of any shares upon completion of the business combination under the 2021 Plan. If the actual facts are different from these assumptions, the above levels of ownership interest will be different.

Please see the section entitled "Summary of the Proxy Statement/Prospectus/Consent Solicitation Statement — Impact of the Business Combination on Vivid Seats PubCo's Public Float" and "Unaudited Pro Forma Condensed Combined Financial Information" for further information.

- Q: What are the material differences between Horizon's amended and restated memorandum and articles of association and the Vivid Seats PubCo Amended and Restated Bylaws and Vivid Seats PubCo Amended and Restated Charter, which will be the organizational documents of Vivid Seats PubCo following the Merger as set forth in the Organizational Documents Proposals?**
- A:** Horizon is asking its shareholders to approve the following material differences between Horizon's amended and restated memorandum and articles of association and the Vivid Seats PubCo Amended and Restated Bylaws and Vivid Seats PubCo Amended and Restated Charter, which will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger: (1) an amendment to authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, 40,000,000 shares of

Horizon Class B ordinary shares, and 1,000,000 preference shares, par value \$0.0001 per share, to 500,000,000 shares of Vivid Seats Class A common stock, 250,000,000 shares of Vivid Seats Class B common stock and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo; (2) an amendment to authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders' Agreement; (3) an amendment to authorize that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain "exempted persons" (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo); (4) an amendment to authorize that the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will adopt Delaware as the exclusive forum for certain stockholder litigation; and (5) an amendment to authorize all other changes in connection with the replacement of Horizon's amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from "Horizon Acquisition Corporation" to "Vivid Seats Inc.," (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon's status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon's board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

See the sections entitled "Proposal No. 3 — Organizational Documents Proposal A," "Proposal No. 4 — Organizational Documents Proposal B," Proposal No. 5 — Organizational Documents Proposal C," "Proposal No. 6 — Organizational Proposal D and "Proposal No. 7 — Organizational Documents Proposal E" for additional information.

**Q: Why is Horizon proposing the NYSE Proposal?**

**A:** Horizon is proposing the NYSE Proposal in order to comply with NYSE listing rules, which require shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, if the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. In connection with the business combination, Horizon is seeking shareholder approval for the issuance of (subject to customary terms and conditions, including the Closing) of Vivid Seats Class A common stock and Vivid Seats Class B common stock in connection with the business combination and the PIPE Subscription. Because the number of securities that Vivid Seats PubCo will issue in connection with the business combination is equal to 20% or more of Horizon's outstanding voting power and outstanding common stock, it is required to obtain shareholder approval of such issuances pursuant to NYSE listing rules. Shareholder approval of the NYSE Proposal is also a condition to closing in the Transaction Agreement. See the section entitled "Proposal No. 8 — The NYSE Proposal" for additional information.

**Q: What happens if I sell my Horizon Class A ordinary shares before the extraordinary general meeting?**

**A:** The record date for the extraordinary general meeting is earlier than the date that the business combination is expected to be completed. If you transfer your Horizon Class A ordinary shares after the record date, but before the extraordinary general meeting, unless the transferee obtains from you a proxy to vote those shares, you will retain your right to vote at the extraordinary general meeting. However, you will not be able to seek redemption of your Horizon Class A ordinary shares because you will no longer be able to deliver them for cancellation upon the Closing in accordance with the provisions described herein. If you transfer your Horizon Class A ordinary shares prior to the record date, you will have no right to vote those shares at the extraordinary general meeting or redeem those shares for a pro rata portion of the proceeds held in the Trust Account.

**Q: What vote is required to approve the Proposals presented at the extraordinary general meeting?**

**A:** Approval of the Business Combination Proposal, the Organizational Documents Proposals and the NYSE Proposal and the Adjournment Proposal requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of the votes cast by the then outstanding Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Business Combination Proposal, the Organizational Documents Proposals and the NYSE Proposal or the Adjournment Proposal.

Sponsor and Horizon's directors and officers hold an aggregate of 37.8% of the total issued Horizon ordinary shares. Assuming that all shareholders who are entitled to do so attend the extraordinary general meeting and vote, the affirmative vote of 8,295,762 of the public shares, in addition to the affirmative vote of Sponsor and Horizon's directors and officers, would be required to approve each of the Business Combination Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal.

Approval of the Merger Proposal requires the approval of a special resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of not less than two-thirds of the votes cast by the then outstanding Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Merger Proposal.

Sponsor and Horizon's directors and officers hold an aggregate of 37.8% of the total issued Horizon ordinary shares. Assuming that all shareholders who are entitled to do so attend the extraordinary general meeting and vote, the affirmative vote of 19,628,768 of the public shares, in addition to the affirmative vote of Sponsor and Horizon's directors and officers, would be required to approve the Merger Proposal.

**Q: May Sponsor or Horizon's directors, officers, or advisors or their respective affiliates purchase shares in connection with the business combination?**

**A:** In connection with the shareholder vote to approve the proposed business combination, Sponsor and Horizon's directors, officers and advisors and their respective affiliates may privately negotiate transactions to purchase shares from shareholders who would have otherwise elected to have their shares redeemed in conjunction with a proxy solicitation pursuant to the proxy rules for a per share pro rata portion of the Trust Account. As of March 31, 2021, Sponsor and Horizon's directors, officers and advisors and certain of their respective affiliates hold approximately 28.7% Horizon Class A ordinary shares and 100% of Horizon Class B ordinary shares. None of Sponsor or Horizon's directors, officers or advisors or their respective affiliates will make any such purchases when they are in possession of any material non-public information not disclosed to the seller. Such a purchase would include a contractual acknowledgement that such shareholder, although still the record holder of Horizon's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights, and could include a contractual provision that directs such shareholder to vote such shares in a manner directed by the purchaser. In the event that Sponsor or Horizon's directors, officers or advisors or their respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. Any such privately negotiated purchases may be effected at purchase prices that are below or in excess of the per share pro rata portion of the Trust Account.

**Q: How many votes do I have at the extraordinary general meeting?**

**A:** Horizon's shareholders are entitled to one vote at the extraordinary general meeting for each Horizon Class A ordinary share or Horizon Class B ordinary share held of record as of \_\_\_\_\_, 2021, the record date for the extraordinary general meeting. As of the close of business on the record date, there were a combined \_\_\_\_\_ outstanding Horizon Class A ordinary shares and Horizon Class B ordinary shares.

**Q: What constitutes a quorum at the extraordinary general meeting?**

**A:** A quorum of Horizon shareholders is necessary to hold a valid meeting. A quorum will be present at the extraordinary general meeting if the holders of a majority of the issued and outstanding Horizon ordinary shares entitled to vote at the extraordinary general meeting are represented in person or by proxy. As of the record date for the extraordinary general meeting, Horizon ordinary shares would be required to achieve a quorum.

**Q: How will Sponsor and Horizon's directors and officers vote?**

**A:** In connection with the IPO, Horizon entered into an agreement with Sponsor and each of Horizon's directors and officers, pursuant to which each agreed to vote any Horizon Class A ordinary shares and Horizon Class B ordinary shares owned by them in favor of the Business Combination Proposal. Currently, Sponsor and Horizon's directors and officers own approximately 28.7% of Horizon's issued and outstanding Horizon Class A ordinary shares and 100% of Horizon Class B ordinary shares, in the aggregate, including all of the founder shares.

**Q: What interests do the current officers and directors have in the business combination?**

**A:** In considering the recommendation of Horizon's board of directors to vote in favor of the business combination, shareholders should be aware that, aside from their interests as shareholders, Sponsor and certain of Horizon's directors and officers have interests in the business combination that are different from, or in addition to, those of other shareholders generally. Horizon's directors were aware of and considered these interests, among other matters, in evaluating the business combination, and in recommending to shareholders that they approve the business combination. Shareholders should take these interests into account in deciding whether to approve the business combination. These interests include, among other things:

- the fact that Sponsor has agreed not to redeem any Class A ordinary shares held by it in connection with a shareholder vote to approve a proposed initial transaction;
- the fact that Sponsor paid an aggregate of \$155 million for 15,500,000 Horizon Class A ordinary shares (after giving effect to forfeitures in connection with the underwriters' overallotment option being reduced or not exercised) (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$155 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$25,000 for 13,599,608 Horizon Class B ordinary shares (after giving effect to forfeitures in connection with the underwriters' overallotment option being reduced or not exercised) (the "Sponsor Shares") (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$136 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$9.78 million for the 6,519,791 Horizon IPO Private Placement Warrants currently owned by Sponsor, and such warrants will expire worthless if a transaction is not consummated by August 25, 2022; the warrants held by Sponsor had an aggregate market value of approximately \$11,605,228 based upon the closing price of \$1.78 per warrant on the NYSE on June 28, 2021;
- the fact that Sponsor and Horizon's other current officers and directors have agreed to waive their rights to liquidating distributions from the Trust Account with respect to any Sponsor Shares held by them if Horizon fails to complete an initial transaction by August 25, 2022;
- the fact that the Registration Rights Agreement will be entered into by Horizon;

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- the fact that, at the option of Sponsor, any amounts outstanding under any loan made by Sponsor or any of its affiliates to Horizon in an aggregate amount of up to \$1,500,000 may be converted into warrants to purchase Vivid Seats Class A common stock in connection with the consummation of the business combination;
- the right of Sponsor to hold shares of Vivid Seats Class A common stock, as well as Vivid Seats PubCo Warrants, following the business combination, subject to certain lock-up periods;
- the continued indemnification of Horizon's existing directors and officers and the continuation of Horizon's directors' and officers' liability insurance after the business combination (*i.e.*, a "tail policy");
- the fact that Sponsor and Horizon's officers and directors will not be reimbursed for any out-of-pocket expenses (estimated at \$0 as of June 28, 2021) if an initial transaction is not consummated by August 25, 2022;
- the fact that if the Trust Account is liquidated, including in the event Horizon is unable to complete an initial transaction by August 25, 2022, Sponsor has agreed to indemnify Horizon to ensure that the proceeds in the Trust Account are not reduced below \$10.00 per public share, or such lesser per public share amount as is in the Trust Account on the liquidation date, by the claims of prospective target businesses with which Horizon has entered into an acquisition agreement or claims of any third party for services rendered or products sold to Horizon, but only if such a vendor or target business has not executed a waiver of any and all rights to seek access to the Trust Account;
- the fact that Horizon may be entitled to distribute or pay over funds held by Horizon outside the Trust Account to Sponsor or any of its affiliates prior to the Closing;
- the fact that Hoya Intermediate shall pay Sponsor \$11.7 million in cash at Closing in consideration for the Sponsor Backstop Commitment;
- the fact that Sponsor can earn a positive return on its investment even if other Horizon shareholders experience a negative return given the potential option value for the warrants; and
- the fact that Sponsor will enter into the Exchange Agreement, pursuant to which all Horizon Class B ordinary shares will be exchanged for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the "Horizon \$10.00 Exercise Warrants"), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the "Horizon \$15.00 Exercise Warrants") and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth in the Exchange Agreement.

### **Q: What happens if I vote against the Business Combination Proposal?**

**A:** Under Horizon's amended and restated memorandum and articles of association, if the Business Combination Proposal is not approved and Horizon does not otherwise consummate an alternative business combination by August 25, 2022, unless further extended, Horizon will be required to dissolve and liquidate the Trust Account by returning the then-remaining funds in such account to Horizon's public shareholders.

### **Q: Do I have redemption rights?**

**A:** If you are a holder of public shares, you may elect to have your public shares redeemed for cash at the applicable redemption price per share equal to the quotient obtained by dividing (a) the aggregate amount on deposit in the Trust Account as of two (2) business days prior to the Closing, including interest not previously released to Horizon to pay its franchise and income taxes, by (b) the total number of Horizon Class A ordinary shares included as part of the units sold in the IPO and which remain outstanding; provided that Horizon will not redeem any public shares to the extent that such redemption would result in Horizon having net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Securities

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Exchange Act of 1934, as amended (the “Exchange Act”)) of less than \$5,000,001. A shareholder holding both Horizon’s public shares and Horizon IPO Public Warrants may redeem its public shares but retain the Horizon IPO Public Warrants, which if the business combination closes, will become warrants of Vivid Seats PubCo. A public shareholder, together with any of his, her or its affiliates or any other person with whom it is acting in concert or as a “group” (as defined under Section 13(d)(3) of the Exchange Act), will be restricted from redeeming in the aggregate his, her or its shares or, if part of such a group, the group’s shares, in excess of 15% of the public shares (the “15% threshold”). Unlike some other blank check companies, other than the net tangible asset requirement and the 15% threshold described above, Horizon has no specified maximum redemption threshold and there is no other limit on the amount of public shares that you can redeem. Holders of outstanding Horizon IPO Public Warrants do not have redemption rights in connection with the business combination. Sponsor and Horizon’s directors and officers have agreed to waive their redemption rights with respect to any shares of Horizon’s ordinary shares they may hold in connection with the Closing. For illustrative purposes, based on the fair value of marketable securities held in the Trust Account as of December 31, 2020 of approximately \$544 million, the estimated per share redemption price would have been approximately \$10.00. Additionally, shares properly tendered for redemption will only be redeemed if the business combination is consummated; otherwise holders of such shares will only be entitled to a pro rata portion of the Trust Account (including interest but net of franchise and income taxes payable) in connection with the liquidation of the Trust Account or if Horizon subsequently completes a different business combination on or prior to August 25, 2022, as may be further extended.

**Q: Will how I vote affect my ability to exercise redemption rights?**

**A:** No. You may exercise your redemption rights whether you vote your Horizon Class A ordinary shares for or against or abstain from voting on the Business Combination Proposal or any other proposal described in this proxy statement/prospectus/consent solicitation statement. As a result, the business combination can be approved by shareholders who will redeem their shares and no longer remain shareholders.

**Q: How do I exercise my redemption rights?**

**A:** In order to exercise your redemption rights, you must (i) if you hold your Horizon Class A ordinary shares through units, elect to separate your units into the underlying public shares and Horizon IPO Public Warrants prior to exercising your redemption rights with respect to the public shares and (ii) prior to 5:00 p.m., Eastern Daylight time, on \_\_\_\_\_, 2021 (two (2) business days before the extraordinary general meeting), tender your shares physically or electronically and submit a request in writing that Horizon redeem your public shares for cash to Continental Stock Transfer & Trust Company, Horizon’s transfer agent, at the following address:

Continental Stock Transfer & Trust Company  
1 State Street Plaza, 30<sup>th</sup> Floor  
New York, New York 10004  
Attention: Mark Zimkind  
Email: [mzimkind@continentalstock.com](mailto:mzimkind@continentalstock.com)

A public shareholder, together with any of his, her or its affiliates or any other person with whom it is acting in concert or as a “group” (as defined in Section 13(d)(3) of the Exchange Act), will be restricted from seeking redemption rights with respect to his, her or its shares or, if part of such a group, the group’s shares, in excess of the 15% threshold. Accordingly, all public shares in excess of the 15% threshold beneficially owned by a public shareholder or group will not be redeemed for cash. Shareholders seeking to exercise their redemption rights and opting to deliver physical certificates should allot sufficient time to obtain physical certificates from the transfer agent and time to effect delivery. It is Horizon’s understanding that shareholders should generally allot at least two weeks to obtain physical certificates from the transfer agent.

However, Horizon does not have any control over this process and it may take longer than two weeks. Shareholders who hold their shares in street name will have to coordinate with their bank, broker or other nominee to have the shares certificated or delivered electronically.

Holders of outstanding units of Horizon must separate the underlying public shares and Horizon IPO Public Warrants prior to exercising redemption rights with respect to the public shares. If you hold units registered in your own name, you must deliver the certificate for such units to Continental Stock Transfer & Trust Company with written instructions to separate such units into public shares and Horizon IPO Public Warrants. This must be completed far enough in advance to permit the mailing of the public share certificates back to you so that you may then exercise your redemption rights upon the separation of the public shares from the units.

If a broker, dealer, commercial bank, trust company or other nominee holds your units, you must instruct such nominee to separate your units. Your nominee must send written instructions by facsimile to Continental Stock Transfer & Trust Company. Such written instructions must include the number of units to be split and the nominee holding such units. Your nominee must also initiate electronically, using the Depository Trust Company's (the "DTC") deposit withdrawal at custodian ("DWAC") system, a withdrawal of the relevant units and a deposit of an equal number of public shares and Horizon IPO Public Warrants. This must be completed far enough in advance to permit your nominee to exercise your redemption rights upon the separation of the public shares from the units. While this is typically done electronically on the same business day, you should allow at least one full business day to accomplish the separation. If you fail to cause your public shares to be separated in a timely manner, you will likely not be able to exercise your redemption rights.

Any demand for redemption, once made, may be withdrawn at any time until the deadline for exercising redemption requests and thereafter, with Horizon's consent, until the vote is taken with respect to the business combination. If you tendered your shares for redemption to the transfer agent and decide within the required timeframe not to exercise your redemption rights, you may request that the transfer agent return the shares (physically or electronically). You may make such request by contacting Horizon's transfer agent at the phone number or address listed under the question "Who can help answer my questions?" below.

**Q: What are the U.S. federal income tax consequences of exercising my redemption rights?**

**A:** We expect that a U.S. Holder (as defined in "U.S. Federal Income Tax Considerations — U.S. Holders") that exercises its redemption rights to receive cash from the trust account in exchange for its public shares will generally be treated as selling such public shares resulting in the recognition of capital gain or loss. There may be certain circumstances in which the redemption may be treated as a distribution for U.S. federal income tax purposes depending on the amount of public shares that such U.S. Holder owns or is deemed to own (including through the ownership of Horizon IPO Public Warrants) prior to and following the redemption. For a more complete discussion of the U.S. federal income tax considerations of an exercise of redemption rights, see "U.S. Federal Income Tax Considerations."

Additionally, because the Merger will occur prior to the redemption by any public shareholder, U.S. Holders exercising redemption rights will be subject to the potential tax consequences of Section 367(b) of the Code and the tax rules relating to PFICs. The tax consequences of the exercise of redemption rights, including pursuant to Section 367(b) of the Code and the PFIC rules, are discussed more fully below under "U.S. Federal Income Tax Considerations — U.S. Holders." All holders of Horizon's public shares considering exercising their redemption rights are urged to consult their tax advisor on the tax consequences to them of an exercise of redemption rights, including the applicability and effect of U.S. federal, state, local and foreign income and other tax laws.

**Q: What are the U.S. federal income tax consequences of the Merger?**

**A:** As discussed more fully under "U.S. Federal Income Tax Considerations," the Merger should constitute a tax-deferred reorganization within the meaning of Section 368(a)(1)(F) of the U.S. Internal Revenue Code



of 1986, as amended (the “Code”). However, due to the absence of direct guidance on the application of Section 368(a)(1)(F) of the Code to the facts and circumstances relating to Horizon, this result is not entirely clear. In the case of a transaction, such as the Merger, that should qualify as a tax-deferred reorganization within the meaning of Section 368(a)(1)(F) of the Code, U.S. Holders (as defined in “U.S. Federal Income Tax Considerations — U.S. Holders” below) will be subject to Section 367(b) of the Code and, as a result of the Merger:

- a U.S. Holder that holds public shares that have a fair market value of less than \$50,000 on the date of the Merger generally will not recognize any gain or loss and will not be required to include any part of Horizon’s earnings in income;
- a U.S. Holder that holds public shares that have a fair market value of \$50,000 or more and that, on the date of the Merger, owns (actually and constructively) less than 10% of the total combined voting power of all classes of Horizon’s stock entitled to vote and less than 10% of the total value of all classes of Horizon’s stock generally will recognize gain (but not loss) on the exchange of public shares for shares of Class A common stock pursuant to the Merger. As an alternative to recognizing gain, such U.S. Holder may file an election to include in income as a deemed dividend the “all earnings and profits amount” (as defined in the Treasury Regulations under Section 367(b) of the Code) attributable to its public shares provided certain other requirements are satisfied; and
- a U.S. Holder that holds public shares having a fair market value of \$50,000 or more and that, on the date of the Merger, owns (actually or constructively) 10% or more of the total combined voting power of all classes of Horizon’s stock entitled to vote or 10% or more of the total value of all classes of Horizon’s stock generally will be required to include in income as a deemed dividend the “all earnings and profits amount” attributable to its public shares provided certain other requirements are satisfied. Any such U.S. Holder that is a corporation may, under certain circumstances, effectively be exempt from taxation on a portion or all of the deemed dividend pursuant to Section 245A of the Code (commonly referred to as the participation exemption).

Horizon does not expect to have significant cumulative earnings and profits through the date of the Merger.

Horizon believes that it is likely classified as a PFIC. If Horizon is a PFIC, a U.S. Holder of public shares may, in certain circumstances, still recognize gain (but not loss) upon the exchange of its public shares or Horizon IPO Public Warrants pursuant to the Merger under the “passive foreign investment company” (“PFIC”) rules of the Code equal to the excess, if any, of the fair market value of the Vivid Seats Class A common stock or Vivid Seats PubCo warrants received in the Merger over the U.S. Holder’s adjusted tax basis in the corresponding public shares or Horizon IPO Public Warrants surrendered in exchange therefor. The tax on any such gain so recognized would be imposed at the rate applicable to ordinary income and an interest charge would apply. For a more complete discussion of the potential application of the PFIC rules to U.S. Holders as a result of the Merger, see the discussion in the section entitled “U.S. Federal Income Tax Considerations — U.S. Holders — PFIC Considerations.”

Additionally, the Merger may cause non-U.S. Holders (as defined in “U.S. Federal Income Tax Considerations — Non-U.S. Holders”) to become subject to U.S. federal income withholding taxes on any dividends paid in respect of such non-U.S. Holder’s shares of Vivid Seats Class A common stock after the Merger.

The tax consequences of the Merger are complex and will depend on a holder’s particular circumstances. All holders are urged to consult their tax advisor on the tax consequences to them of the Merger, including the applicability and effect of U.S. federal, state, local and foreign income and other tax laws. For a more complete discussion of the U.S. federal income tax considerations of the Merger, see “U.S. Federal Income Tax Considerations.”

**Q: What are the U.S. federal income tax consequences of the adoption of the Warrant Amendment?**

**A:** As discussed more fully under “U.S. Federal Income Tax Considerations,” we intend to treat the adoption of the Warrant Amendment as a deemed exchange, solely for income tax purposes, of Horizon IPO Public



Warrants for “new” warrants that qualifies as a “recapitalization” within the meaning of Section 368(a)(1)(E) of the Code. However, due to the absence of direct guidance on the application of Section 368(a)(1)(E) of the Code to the facts and circumstances relating to Horizon, this result is not entirely clear. For a more complete discussion of the U.S. federal income tax considerations of the adoption of the Warrant Amendment, see “U.S. Federal Income Tax Considerations.”

**Q: If I am a warrant holder, can I exercise redemption rights with respect to my warrants?**

**A:** No. The holders of Horizon’s warrants have no redemption rights with respect to such warrants.

**Q: Do I have appraisal rights if I object to the proposed business combination?**

**A:** Under Section 239 of the CICA, the holders of Horizon public shares will not have appraisal or dissenter rights in connection with the business combination, including in connection with the Merger. Holders of public shares should consult their Cayman Islands legal counsel regarding their rights under the CICA.

**Q: What happens to the funds deposited in the Trust Account after the Closing?**

**A:** If the Business Combination Proposal is approved, Horizon intends to use a portion of the funds held in the Trust Account to pay (i) a portion of Horizon’s aggregate costs, fees and expenses in connection with the consummation of the business combination, (ii) tax obligations and advisory fees and (iii) for any redemptions of public shares. The remaining balance in the Trust Account will be used for: (i) together with proceeds received from the PIPE Subscription, the repayment of a portion of outstanding debt (held at a subsidiary of Vivid Seats PubCo) and (ii) general corporate purposes. See the section entitled “Proposal No. 1 — The Business Combination Proposal” for additional information.

**Q: What happens if the business combination is not consummated or is terminated?**

**A:** There are certain circumstances under which the Transaction Agreement may be terminated. See the section entitled “Proposal No. 1 — The Business Combination Proposal — The Transaction Agreement — Termination” for additional information regarding the parties’ specific termination rights. In accordance with Horizon’s existing amended and restated memorandum and articles of association, if an initial business combination is not consummated by August 25, 2022, unless extended, Horizon will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders’ rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of Horizon’s remaining shareholders and board of directors, liquidate and dissolve, subject, in each case, to Horizon’s obligations under Cayman Islands law to provide for claims of creditors and the other requirements of applicable law.

Horizon expects that the amount of any distribution its public shareholders will be entitled to receive upon its dissolution will be approximately the same as the amount they would have received if they had redeemed their shares in connection with the business combination, subject in each case to Horizon’s obligations under the Cayman Islands law to provide for claims of creditors and other requirements of applicable law. Holders of the founder shares have waived any right to any liquidating distributions with respect to those shares.

In the event of liquidation, there will be no distribution with respect to Horizon’s outstanding warrants. Accordingly, the warrants will expire worthless.

**Q: When is the business combination expected to be consummated?**

**A:** It is currently anticipated that the business combination will be consummated promptly following the extraordinary general meeting of Horizon shareholders to be held on \_\_\_\_\_, 2021; provided that all the requisite shareholder approvals are obtained and other conditions to the Closing have been satisfied or waived. For a description of the conditions for the completion of the business combination, see the section entitled “Proposal No. 1 — The Business Combination Proposal — The Transaction Agreement — Conditions to the Closing of the Business Combination.”

**Q: What do I need to do now?**

**A:** You are urged to read carefully and consider the information contained in this proxy statement/prospectus/consent solicitation statement, including “Risk Factors” and the annexes, and to consider how the business combination will affect you as a shareholder. You should then vote as soon as possible in accordance with the instructions provided in this proxy statement/prospectus/consent solicitation statement and on the enclosed proxy card or, if you hold your shares through a brokerage firm, bank or other nominee, on the voting instruction form provided by the broker, bank or nominee.

**Q: How do I vote?**

**A:** If you were a holder of record of Horizon Class A ordinary shares or Horizon Class B ordinary shares on \_\_\_\_\_, 2021, the record date for the extraordinary general meeting of Horizon shareholders, you may vote with respect to the proposals in person at the extraordinary general meeting or by completing, signing, dating and returning the enclosed proxy card in the postage-paid envelope provided. If you hold your shares in “street name,” which means your shares are held of record by a broker, bank or other nominee, you should follow the instructions provided by your broker, bank or nominee to ensure that votes related to the shares you beneficially own are properly counted. In this regard, you must provide the record holder of your shares with instructions on how to vote your shares or, if you wish to attend the extraordinary general meeting and vote in person, obtain a proxy from your broker, bank or nominee.

**Q: What will happen if I abstain from voting or fail to vote at the extraordinary general meeting?**

**A:** At the extraordinary general meeting, Horizon will count a properly executed proxy marked “ABSTAIN” with respect to a particular proposal as present for purposes of determining whether a quorum is present. For purposes of approval, failure to vote or an abstention will have no effect on the Proposals.

**Q: What will happen if I sign and submit my proxy card without indicating how I wish to vote?**

**A:** Signed and dated proxies received by Horizon without an indication of how the shareholder intends to vote on a proposal will be voted “FOR” each proposal presented to the shareholders.

**Q: If I am not going to attend the extraordinary general meeting in person, should I submit my proxy card instead?**

**A:** Yes. Whether you plan to attend the extraordinary general meeting or not, please read the enclosed proxy statement/prospectus/consent solicitation statement carefully, and vote your shares by completing, signing, dating and returning the enclosed proxy card in the postage-paid envelope provided.

**Q: If my shares are held in “street name,” will my broker, bank or nominee automatically vote my shares for me?**

**A:** No. Under the rules of various national and regional securities exchanges, your broker, bank, or nominee cannot vote your shares with respect to non-discretionary matters unless you provide instructions on how to vote in accordance with the information and procedures provided to you by your broker, bank, or nominee.

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Horizon believes the proposals presented to the shareholders will be considered non-discretionary and therefore your broker, bank, or nominee cannot vote your shares without your instruction. Your bank, broker, or other nominee can vote your shares only if you provide instructions on how to vote. You should instruct your broker to vote your shares in accordance with directions you provide.

**Q: May I change my vote after I have submitted my executed proxy card?**

**A:** Yes. You may change your vote by sending a later-dated, signed proxy card to Horizon's secretary at the address listed below so that it is received by Horizon's secretary prior to the extraordinary general meeting or attend the extraordinary general meeting in person and vote. You also may revoke your proxy by sending a notice of revocation to Horizon's secretary, which must be received prior to the extraordinary general meeting.

**Q: What should I do if I receive more than one set of voting materials?**

**A:** You may receive more than one set of voting materials, including multiple copies of this proxy statement/prospectus and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a holder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive in order to cast your vote with respect to all of your shares.

**Q: How can I return my Written Consent to the Warrant Amendment?**

**A:** If you were a holder of record of Horizon IPO Warrants on \_\_\_\_\_, 2021, the record date for the consent solicitation, and you wish to give your consent to the Warrant Amendment, you must complete, sign, date and return the Written Consent in the postage-paid envelope provided. If you hold your Horizon IPO Warrants in "street name," which means your Horizon IPO Warrants are held of record by a broker, bank or other nominee, you should follow the instructions provided by your broker, bank or nominee to ensure that Written Consents related to the Horizon IPO Warrants you beneficially own are properly counted. In this regard, you must provide the record holder of your Horizon IPO Warrants with instructions on whether to provide your consent to the Warrant Amendment with respect to your warrants. If approved, the Warrant Amendment would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation.

**Q: What is the deadline for returning my Written Consent?**

**A:** The consent solicitation will expire on the Consent Solicitation End Date, which is 11:59 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2021, or such later time and date to which Horizon may extend the consent solicitation. The Written Consent must be received by Horizon by the Consent Solicitation End Date, as described in this proxy statement/prospectus/consent solicitation statement. If the Consent Solicitation End Date is extended, we will make a public announcement of such extension by no later than 9:00 a.m., Eastern Daylight Time, on the next business day following the Consent Solicitation End Date as in effect immediately prior to such extension.

**Q: What happens if I sell my Horizon IPO Warrants prior to the Consent Solicitation End Date?**

**A:** The record date for the consent solicitation is \_\_\_\_\_, 2021. If you transfer your Horizon IPO Warrants after the record date, unless the transferee obtains from you a proxy to deliver a consent as to those

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warrants, you will retain your right to submit your written consent. If you transfer your Horizon IPO Warrants prior to the record date, you will have no right to participate in the consent solicitation.

**Q: What happens to the business combination if the Warrant Amendment is not approved?**

**A:** The success or failure of the consent solicitation and the adoption of the Warrant Amendment will have no effect on the completion of the business combination or the Proposals. Adoption of the Warrant Amendment is not a condition to the business combination or the Proposals.

**Q: Who can help answer my questions?**

**A:** If you have questions about the proposals or if you need additional copies of the proxy statement/prospectus/consent solicitation statement or the enclosed proxy card you should contact Horizon's Secretary at \_\_\_\_\_.

You may also contact Horizon's proxy solicitor at:

Telephone: (800) 663-5200  
(banks and brokers call collect at (203) 658-9400)  
Email: [HZAC.info@investor.morrowsodali.com](mailto:HZAC.info@investor.morrowsodali.com)

To obtain timely delivery, Horizon's shareholders must request the materials no later than five (5) business days prior to the extraordinary general meeting.

You may also obtain additional information about Horizon from documents filed with the SEC by following the instructions in the section entitled "Where You Can Find Additional Information."

If you intend to seek redemption of your public shares, you will need to send a letter demanding redemption and deliver your stock (either physically or electronically) to Horizon's transfer agent at least two business days prior to the extraordinary general meeting in accordance with the procedures detailed under the question "How do I exercise my redemption rights?" If you have questions regarding the certification of your position or delivery of your stock, please contact:

Continental Stock Transfer & Trust Company  
1 State Street Plaza, 30<sup>th</sup> Floor  
New York, New York 10004  
Attention: Mark Zimkind  
Email: [mzimkind@continentalstock.com](mailto:mzimkind@continentalstock.com)

**Q: Who will solicit and pay the cost of soliciting proxies?**

**A:** Horizon will pay the cost of soliciting proxies for the extraordinary general meeting. Horizon has engaged \_\_\_\_\_ (the "Solicitation Agent"), to assist in the solicitation of proxies for the extraordinary general meeting. Horizon has agreed to pay the Solicitation Agent a fee of \$ \_\_\_\_\_, plus disbursements. Horizon will reimburse the Solicitation Agent for reasonable out-of-pocket expenses and will indemnify the Solicitation Agent and its affiliates against certain claims, liabilities, losses, damages and expenses. Horizon will also reimburse banks, brokers and other custodians, nominees and fiduciaries representing beneficial owners of Horizon Class A ordinary shares and Horizon Class B ordinary shares their expenses in forwarding soliciting materials to beneficial owners of Horizon Class A ordinary shares and Horizon Class B ordinary shares and in obtaining voting instructions from those owners. Horizon's directors, officers and employees may also solicit proxies by telephone, by facsimile, by mail, on the Internet or in person. They will not be paid any additional amounts for soliciting proxies.

## SUMMARY OF THE PROXY STATEMENT/PROSPECTUS/CONSENT SOLICITATION STATEMENT

*This summary highlights selected information from this proxy statement/prospectus/consent solicitation statement and does not contain all of the information that is important to you. To better understand the business combination and the proposals to be considered at the extraordinary general meeting, you should read this entire proxy statement/prospectus/consent solicitation statement carefully, including the annexes. See also the section entitled “Where You Can Find Additional Information.”*

### Parties to the Business Combination

#### Horizon Acquisition Corporation

Horizon is a blank check company incorporated on June 12, 2020 as a Cayman Islands exempted company and formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. We reviewed a number of opportunities to enter into a business combination with an operating business, and we entered into the Transaction Agreement on April 21, 2021. We intend to finance the business combination through a combination of (i) cash held in the Trust Account net of redemptions and deferred underwriting discounts and (ii) gross proceeds of the PIPE Subscription.

Horizon seeks to capitalize on the multiple decades of combined investment experience of Todd Boehly, our Chairman, Chief Executive Officer and Chief Financial Officer, and the members of Horizon’s board of directors. Mr. Boehly is the co-founder, Chairman and Chief Executive Officer of Eldridge Industries (“Eldridge”), a holding company with a unique network of businesses across finance, technology, real estate and entertainment.

Founded in 2015 and headquartered in Greenwich, CT, with additional offices in New York, London and Beverly Hills, Eldridge and its affiliated companies employed more than 2,500 people globally as of December 31, 2019. Eldridge owns and operates companies as well as utilizes its network and insights to make minority investments in businesses with attractive growth potential. Mr. Boehly has spent his career seeking to identify growth opportunities and create value. Under his leadership, Eldridge has achieved strong success across multiple financial services and consumer-oriented businesses through a consistent focus on aligning people, capital and technology, managing in excess of \$40 billion in assets as of December 31, 2020.

On August 25, 2020, Horizon completed its initial public offering of 50,000,000 units, plus an additional 4,398,433 units subsequently issued upon full exercise of the underwriters’ over-allotment option, at a price of \$10.00 per unit generating gross proceeds of \$543,984,330 before underwriting discounts and expenses. Each unit consisted of one Horizon Class A ordinary share and one-third of one Horizon IPO Public Warrant. Each whole Horizon IPO Public Warrant entitles the holder thereof to purchase one Horizon Class A ordinary share at an exercise price of \$11.50 per share, subject to certain adjustments. Simultaneous with the closing of its initial public offering, Horizon completed the private placement of 5,933,333 Horizon IPO Private Placement Warrants, plus an additional 586,458 Horizon IPO Private Placement Warrants subsequently issued upon full exercise of the underwriters’ over-allotment option, at a price of \$1.50 per private placement warrant, generating aggregate total proceeds of \$9.8 million. The Horizon IPO Private Placement Warrants sold in the private placement are substantially identical to the Horizon IPO Public Warrant forming a part of the warrants sold in the initial public offering, except that (i) subject to certain limited exceptions, they are subject to transfer restrictions until 30 days following the consummation of Horizon’s initial business combination, (ii) subject to certain limitations, if held by Sponsor or its permitted transferees, they are not redeemable, and (iii) if held by Sponsor or its permitted transferees, they may be exercised on a cashless basis and have certain registration rights.

Following the closing of the initial public offering, a total of \$543,984,330 from the net proceeds from the sale of units in the initial public offering and the sale of the Horizon IPO Private Placement Warrants was placed in the Trust Account. The Trust Account may be invested only in U.S. government treasury bills with a maturity of 185 days or less or in money market funds investing solely in United States Treasuries and meeting certain conditions under Rule 2a-7 under the Investment Company Act of 1940, as amended, which invest only in direct U.S. government treasury obligations. As of December 31, 2020, funds in the Trust Account totaled approximately \$544,002,795. These funds will remain in the Trust Account, except for the withdrawal of interest to pay income taxes, if any, until the earliest of (i) the completion of Horizon's initial business combination or (ii) the redemption of all of the public shares if Horizon is unable to complete a business combination by August 25, 2022 (unless such date is extended in accordance with the Existing Organizational Documents (as defined herein)), subject to applicable law.

Horizon Class A ordinary shares and Horizon IPO Public Warrants, which are exercisable for Horizon Class A ordinary shares under certain circumstances, are currently listed on the NYSE under the symbols "HZAC" and "HZAC WS," respectively.

For more information about Horizon, see the sections entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations of Horizon" and "Other Information Related to Horizon."

## **Vivid Seats**

*Unless the context otherwise requires, all references in this subsection to the "Company," "we," "us" or "our" refer to the business of Vivid Seats prior to the Closing, which will be the business of Vivid Seats PubCo and its subsidiaries following the Closing.*

### **Our Company**

Vivid Seats is a leading marketplace that allows fans of live events to connect seamlessly with third-party ticket sellers through our technology platform that spans the ecosystem. We believe Vivid Seats is a leading marketplace based on a combination of (1) third party estimates of the overall market size, including estimates provided in a 2017 report prepared for Vivid Seats by a third party consulting firm, (2) publicly available information including our competitors' filings with the SEC and (3) internal company information from our Skybox platform that provides insights into volumes across marketplaces representing a meaningful portion of the overall secondary ticketing market.

Our mission is to connect buyers and sellers, empowering fans to *Experience It Live*. We believe live events deliver some of life's most exciting moments and our platform provides customers (both on the buy and sell side) with an easy-to-use, trusted marketplace experience that ensures fans can attend live events and create memories that last a lifetime. During the years ended December 31, 2019 and 2020 we generated \$469 million and \$35 million of revenues, respectively, and \$2,280 million and \$347 million of Marketplace gross order value ("Marketplace GOV").

We operate a technology platform which provides the infrastructure supporting our marketplace that helps buyers easily purchase tickets from third-party ticket sellers and discover and attend live events while enabling third-party sellers to seamlessly manage their end-to-end operations. We unite millions of buyers with thousands of sellers. We have mutually beneficial partnerships with a number of content rights holders, media partners, product and service partners and distribution partners.

Our platform is built on years of customer transactional and engagement data that provides us with deep insights into how to best connect buyers with the experiences they seek. We understand the feeling of

anticipation as the lights go down, the excitement of come-from-behind wins, and the passion for guitar solos, and we work diligently to enable fans to experience as many of these moments as possible. In 2019, we connected over five million buyers to over 200,000 unique events. Our marketplace connects fans who cheer on their home-town sports team, rock out to their favorite band or attend acclaimed theater productions with ticket sellers that choose to list a wide variety of their inventory on our platform.

### **Private Equity Owner**

We have a valuable relationship with our Private Equity Owner, which consists of certain investment funds affiliated with GTCR. Founded in 1980, GTCR is a leading growth-oriented private equity firm focused on investing in growth companies in the Healthcare, Financial Services & Technology, Technology, Media & Telecommunications and Growth Business Services industries. The Chicago-based firm pioneered The Leaders Strategy™—finding and partnering with management leaders in core domains to identify, acquire and build market-leading companies through transformational acquisitions and organic growth. Since its inception, our Private Equity Owner has invested more than \$20.0 billion in over 250 companies. Our Private Equity Owner purchased its controlling interest in Vivid Seats on June 30, 2017.

### **Company Information**

Vivid Seats PubCo was incorporated in Delaware on March 29, 2021 as a wholly owned subsidiary of Hoya Intermediate for the purpose of completing the business combination.

The headquarters for the Vivid Seats business is located at 111 N. Canal Street, Suite 800, Chicago, Illinois 60606. The Vivid Seats PubCo telephone number is (312) 291-9966 and its website is [www.vividseats.com](http://www.vividseats.com). The information on or available through any of such website is not deemed incorporated in this proxy statement/prospectus/consent solicitation statement and does not form part of this proxy statement/prospectus/consent solicitation statement.

### **The Business Combination**

On April 21, 2021, Horizon, Sponsor, Vivid Seats PubCo, Hoya Topco and Hoya Intermediate entered into the Transaction Agreement, pursuant to which: (a) at least one (1) day prior to the Merger, and in accordance with the Exchange Agreement, Sponsor and Horizon will effect the Exchange, (b) prior to the Merger, Hoya Topco and Vivid Seats will effect the Pre-Closing Restructuring (as defined in the Transaction Agreement), which will include the Class A Redemption and the Intermediate Merger; (c) at the Effective Time, Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving entity in the Merger, and by virtue of the Merger, (i) each Horizon ordinary share will be converted into a share of Vivid Seats Class A common stock, (ii) each Horizon Warrant will be converted into a corresponding Vivid Seats PubCo Warrant and (iii) the certificate of incorporation and bylaws of Vivid Seats PubCo in effect immediately prior to the Effective Time will be amended and restated to the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws; (d) at the Closing, the Second A&R LLCA will become effective; (e) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Vivid Seats PubCo will purchase the Crescent Blockers from the Blocker Sellers in the Blocker Purchase; (f) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Hoya Intermediate will issue to Vivid Seats PubCo Intermediate Common Units and warrants to purchase Intermediate Common Units in the Intermediate Contribution and Issuance, which contribution includes Vivid Seats PubCo's contribution of cash in an amount equal to (A) all available cash of Vivid Seats PubCo following the Merger and the PIPE Subscription, *minus* (B) the Blocker Purchase Price, *minus* (C) the Blocker Tax Liabilities; (g) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Hoya Intermediate will redeem all of the Intermediate Common Units held by the

Redeemed Crescent Parties in the Crescent Redemption; (h) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Vivid Seats PubCo will issue 118,200,000 shares of Vivid Seats Class B common stock and 6,000,000 warrants to purchase Vivid Seats Class B common stock to Hoya Topco in the Class B Issuance; and (i) Hoya Intermediate will contribute a portion of the funds received from Vivid Seats PubCo to Hoya Midco. Immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units, resulting in a cash payment of \$225.1 million. Upon the Closing, Vivid Seats expects to apply \$488.9 million of the business combination and PIPE Subscription proceeds towards debt repayments resulting in the full repayment of its May 2020 First Lien Loan and a partial repayment of its June 2017 First Lien Loan.

For more information about the Transaction Agreement and the business combination and other transactions contemplated thereby, see the section entitled “Proposal No. 1 — The Business Combination Proposal.”

### Conditions to the Closing

*Conditions to Obligations of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to Consummate the Business Combination.* The obligations of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to consummate the business combination are subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by all of such parties:

- The Horizon Shareholder Approval will have been obtained;
- No order, injunction, judgment, law or similar determination by a court or other governmental authority will be pending that prohibits or otherwise prevents the business combination;
- The registration statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the registration statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;
- The Pre-Closing Restructuring shall have been consummated prior to the Closing; and
- The shares of Vivid Seats Class A common stock to be issued in connection with the business combination shall have been approved for listing on Nasdaq and such approval shall not be subject to any conditions or any plan of compliance to which Vivid Seats PubCo would be subject after the Closing.

*Conditions to Obligations of Horizon to Consummate the Business Combination.* The obligations of Horizon to consummate the business combination are subject to the satisfaction at or prior to the Closing of the following conditions, any one or more of which may be waived in writing by Horizon:

- Certain fundamental representations and warranties of the Vivid Seats Companies related to organization, due authorization, absence of changes and brokers’ fees contained in the Transaction Agreement shall be true and correct in all material respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- The representations and warranties of the Vivid Seats Companies related to capitalization contained in the Transaction Agreement shall be true and correct in all respects other than *de minimis* inaccuracies of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- Each of the other representations and warranties of the Vivid Seats Companies contained in the Transaction Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or “Company Material Adverse Effect” or another similar materiality qualification set forth therein) as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, have not had, and would not reasonably be expected to have a Company Material Adverse Effect (as defined in the Transaction Agreement);



- Each of the covenants of Hoya Topco and the Vivid Seats Companies contained in the Transaction Agreement shall have been performed as of or prior to the Closing; and
- There shall not have occurred a Company Material Adverse Effect.

*Conditions to Obligations of Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to Consummate the Business Combination.* The obligations of Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to consummate the business combination are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Hoya Topco, Hoya Intermediate and Vivid Seats PubCo:

- Certain fundamental representations and warranties of Horizon related to organization, due authorization, the Trust Account, absence of changes and brokers' fees contained in the Transaction Agreement shall be true and correct in all material respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- The representations and warranties of Horizon related to capitalization contained in the Transaction Agreement shall be true and correct in all respects other than *de minimis* inaccuracies of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- Each of the other representations and warranties of Horizon contained in the Transaction Agreement shall be true and correct (without giving effect to any limitation as to "materiality" or "Horizon Material Adverse Effect" or another similar materiality qualification set forth therein) as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, have not had, and would not reasonably be expected to have a Horizon Material Adverse Effect (as defined in the Transaction Agreement);
- Each of the covenants of Horizon contained in the Transaction Agreement shall have been performed as of or prior to the Closing; and
- The Available Horizon Cash will be no less than the Minimum Available Horizon Cash Amount immediately prior to the Closing (after deducting the amount required to satisfy the Horizon Share Redemption Amount and excluding transaction expenses of Vivid Seats and Horizon).

#### **Regulatory Matters**

The business combination are not subject to any additional federal or state regulatory requirement or approval, except for the filings with the Registrar of Companies of the Cayman Islands and the State of Delaware, in each case, that are necessary to effectuate the business combination.

#### **Related Agreements**

*Vivid Seats PubCo Amended and Restated Charter.*

Pursuant to the terms of the Transaction Agreement, the Vivid Seats PubCo Amended and Restated Charter will be the certificate of incorporation of Vivid Seats PubCo following the Closing, which will, among other things, provide for three classes of stock, the Vivid Seats Class A common stock, which will be issued to Sponsor, the PIPE Investors and Horizon's public shareholders in connection with the Closing, the Vivid Seats Class B common stock which will be issued to Hoya Topco in connection with the Closing, and preferred stock, none of which will be issued in connection with the Closing. For more information about the amendments to Vivid Seats PubCo's certificate of incorporation, see section entitled "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Vivid Seats PubCo Amended and Restated Charter."

*Second A&R LLCA of Hoya Intermediate.*

Following the Closing, Vivid Seats PubCo will operate its business through Hoya Intermediate and its subsidiaries. At the Closing, Vivid Seats PubCo and Hoya Topco will enter into the Second A&R LLCA of Hoya Intermediate, which will set forth, among other things, the rights and obligations of the board of managers and members of Hoya Intermediate. For more information about the Second A&R LLCA of Hoya Intermediate, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Second A&R LLCA of Hoya Intermediate.”

*Crescent Purchase Agreement.*

Hoya Topco, Hoya Intermediate, Vivid Seats PubCo, Horizon, the Blocker Sellers, the Redeemed Crescent Parties, the Crescent Blockers and Crescent Capital Group LP entered into the Purchase, Sale and Redemption Agreement on April 21, 2021, (the “Crescent Purchase Agreement”), pursuant to which the parties thereto agree to, among other things, effect the Class A Redemption, the Intermediate Merger, the Blocker Purchase and the Crescent Redemption. For more information about the Crescent Purchase Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Crescent Purchase Agreement.”

*Registration Rights Agreement.*

At the Closing, Vivid Seats PubCo, Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement, dated as of August 25, 2020, by and between Horizon and Sponsor. Pursuant to the Registration Rights Agreement, Vivid Seats PubCo will agree to file a registration statement for a shelf registration on Form S-1 or Form S-3 within 30 days following Closing and Sponsor and Hoya Topco will be granted certain customary registration rights with respect to the securities of Vivid Seats PubCo. For more information about the Registration Rights Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Registration Rights Agreement.”

*Stockholders’ Agreement.*

At the Closing, Vivid Seats PubCo will enter into the Stockholders’ Agreement with Sponsor and Hoya Topco, pursuant to which, among other things, Hoya Topco and its affiliates will be granted the right to designate five (5) directors for election to the board of directors of the Vivid Seats Board (one (1) of which will be independent) and Sponsor and its affiliates will be granted the right to designate three (3) directors for election to the Vivid Seats Board (two (2) of which will be independent) (and the parties thereto will vote in favor of such designees). Additionally, the Stockholders’ Agreement contains certain restrictions on transfer with respect to lock-up shares held by Sponsor and Hoya Topco, including a twelve (12) month lock-up of such shares in each case, subject to limited exceptions as contemplated thereby (including that Sponsor and Hoya Topco may each transfer: (a) fifty percent (50%) of their lock-up shares on the date that is six (6) months following the Closing Date and (b) the remaining lock-up shares on any date, at least six (6) months after the Closing, on which (i) the price per lock-up share exceeds \$15.00 per share for twenty (20) trading days within a thirty (30) day trading period and (ii) the average daily trading volume exceeds one (1) million shares of Vivid Seats PubCo common stock during such thirty (30) trading day period). The Stockholders’ Agreement also contains certain provisions intended to maintain, following the consummation of the business combination, Vivid Seats PubCo’s qualification as a “controlled company” within the meaning of Nasdaq Listing Rule 5615(c)(1).

For more information about the Stockholders’ Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Stockholders’ Agreement.”

*Tax Receivable Agreement.*

At the Closing, Vivid Seats PubCo, Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders will enter into the Tax Receivable Agreement, a form of which is attached hereto as *Annex F*. Pursuant to the Tax Receivable Agreement, Vivid Seats PubCo will generally be required to pay Hoya Topco and the other TRA Holders 85% of the amount of savings, if any, in U.S. federal, state, local, and foreign taxes that are based on, or measured with respect to, net income or profits, and any interest related thereto that the Tax Group (i.e. Vivid Seats PubCo and applicable consolidated, unitary or combined subsidiaries thereof) realizes, or is deemed to realize, as a result of certain Tax Attributes (as defined herein), which include:

- existing tax basis in certain assets of Hoya Intermediate and certain of its direct or indirect subsidiaries, including assets that will eventually be subject to depreciation or amortization, once placed in service;
- tax basis adjustments resulting from taxable exchanges of Intermediate Common Units (including any such adjustments resulting from certain payments made by Vivid Seats PubCo under the Tax Receivable Agreement) acquired by Vivid Seats PubCo from a TRA Holder pursuant to the terms of the Second A&R LLCA;
- certain tax attributes of Blocker Corporations holding Intermediate Common Units that are acquired directly or indirectly by Vivid Seats PubCo pursuant to a Reorganization Transaction;
- certain tax benefits realized by Vivid Seats PubCo as a result of certain U.S. federal income tax allocations of taxable income or gain away from Vivid Seats PubCo and to other members of Hoya Intermediate and deductions or losses to Vivid Seats PubCo and away from other members of Hoya Intermediate, in each case, as a result of the business combination; and
- tax deductions in respect of portions of certain payments made under the Tax Receivable Agreement.

For more information about the Tax Receivable Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Tax Receivable Agreement.”

*PIPE Subscription Agreements.*

Horizon and Vivid Seats PubCo entered into the subscription agreements (the “Subscription Agreements”) with the PIPE Investors, pursuant to which the PIPE Investors have agreed to subscribe for and purchase, an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million; provided, however, such subscription is subject to increase due to the Sponsor Backstop Commitment. Eldridge Industries, LLC, an affiliate of the Sponsor, has agreed to purchase 19,000,000 shares of Vivid Seats Class A Common Stock in a private placement for a purchase price of \$10.00 per share in the PIPE Subscription. The Subscription Agreements provide that Vivid Seats PubCo will grant the investors in the PIPE Subscription certain customary registration rights. Vivid Seats PubCo will, within 30 days after the consummation of the business combination, file with the SEC a registration statement registering the resale of such shares of Vivid Seats Class A common stock and will use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. The closing of the PIPE Subscription is contingent upon, among other things, the substantially concurrent consummation of the business combination.

For more information about the Subscription Agreements, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — PIPE Subscription Agreements.”

*Sponsor Agreement.*

Horizon has entered into a sponsor agreement with Sponsor and Hoya Topco (the “Sponsor Agreement”), pursuant to which Sponsor agreed to vote in favor of the Proposals, in each case, subject to the terms and

conditions contemplated by the Sponsor Agreement. Sponsor also agreed to (a) waive certain anti-dilution protections it may be entitled to under Horizon's organizational documents or otherwise, (b) certain transfer restrictions on the Horizon ordinary shares and Horizon Warrants beneficially owned by Sponsor and its affiliates, (c) not to solicit any business combination other than the business combination with Hoya Topco, in each case, subject to limited exceptions as contemplated thereby and (d) provide the Sponsor Backstop Commitment, in consideration for a fee of approximately \$11.7 million.

For more information about the Sponsor Agreement, see the section entitled "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Sponsor Agreement."

*Other Agreements.*

For more information about other agreements to be entered into by Horizon and its affiliates at the Closing, see the section entitled "Proposal No. 1 — The Business Combination Proposal — Related Agreements."

**Interests of Certain Persons in the Business Combination**

*Horizon – Interests of Certain Persons*

In considering the recommendation of Horizon's board of directors to vote in favor of the business combination, shareholders should be aware that, aside from their interests as shareholders, Sponsor and certain of Horizon's directors and officers have interests in the business combination that are different from, or in addition to, those of other shareholders generally. Horizon's directors were aware of and considered these interests, among other matters, in evaluating the business combination, and in recommending to shareholders that they approve the business combination. Shareholders should take these interests into account in deciding whether to approve the business combination. These interests include, among other things:

- the fact that Sponsor has agreed not to redeem any Horizon Class A ordinary shares held by it in connection with a shareholder vote to approve a proposed initial transaction;
- the fact that Sponsor paid an aggregate of \$155 million for 15,500,000 Horizon Class A ordinary shares (after giving effect to forfeitures in connection with the underwriters' over-allotment option being reduced or not exercised) (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$155 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$25,000 for 13,599,608 Horizon Class B ordinary shares (after giving effect to forfeitures in connection with the underwriters' over-allotment option being reduced or not exercised) (the "Sponsor Shares") (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at \$136 million based on the closing price of \$10.00 per public share on the NYSE on June 8, 2021;
- the fact that Sponsor paid an aggregate of \$9.78 million for the 6,519,791 Horizon IPO Private Placement Warrants currently owned by Sponsor, and such warrants will expire worthless if a transaction is not consummated by August 25, 2022; the warrants held by Sponsor had an aggregate market value of approximately \$11,605,228 based upon the closing price of \$1.78 per warrant on the NYSE on June 28, 2021;
- the fact that Sponsor and Horizon's other current officers and directors have agreed to waive their rights to liquidating distributions from the Trust Account with respect to any Sponsor Shares held by them if Horizon fails to complete an initial transaction by August 25, 2022;

- the fact that the Registration Rights Agreement will be entered into by Horizon;
- the fact that, at the option of Sponsor, any amounts outstanding under any loan made by Sponsor or any of its affiliates to Horizon in an aggregate amount of up to \$1,500,000 may be converted into warrants to purchase Vivid Seats Class A common stock in connection with the consummation of the business combination;
- the right of Sponsor to hold shares of Vivid Seats PubCo Class A common stock, as well as Vivid Seats PubCo Warrants, following the business combination, subject to certain lock-up periods;
- the continued indemnification of Horizon's existing directors and officers and the continuation of Horizon's directors' and officers' liability insurance after the business combination (*i.e.*, a "tail policy");
- the fact that Sponsor and Horizon's officers and directors will not be reimbursed for any out-of-pocket expenses (estimated at \$0 as of June 28, 2021) if an initial transaction is not consummated by August 25, 2022;
- the fact that if the Trust Account is liquidated, including in the event Horizon is unable to complete an initial transaction by August 25, 2022, Sponsor has agreed to indemnify Horizon to ensure that the proceeds in the Trust Account are not reduced below \$10.00 per public share, or such lesser per public share amount as is in the Trust Account on the liquidation date, by the claims of prospective target businesses with which Horizon has entered into an acquisition agreement or claims of any third party for services rendered or products sold to Horizon, but only if such a vendor or target business has not executed a waiver of any and all rights to seek access to the Trust Account;
- the fact that Horizon may be entitled to distribute or pay over funds held by Horizon outside the Trust Account to Sponsor or any of its affiliates prior to the Closing;
- the fact that Hoya Intermediate shall pay Sponsor \$11.7 million in cash at Closing in consideration for the Sponsor Backstop Commitment;
- the fact that Sponsor can earn a positive return on its investment even if other Horizon shareholders experience a negative return give the potential option value for the new warrants; and
- the fact that Sponsor will enter into the Exchange Agreement, pursuant to which all Horizon Class B ordinary shares will be exchanged for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the "Horizon \$10.00 Exercise Warrants"), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the "Horizon \$15.00 Exercise Warrants") and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth in the Exchange Agreement.

#### *Hoya Intermediate – Interests of Certain Persons*

Hoya Intermediate is a manager-managed limited liability company, with Hoya Topco serving as the sole manager, and as such does not have any directors. Its officers are Stanley Chia, its chief executive officer and president, and Lawrence Fey, its chief financial officer. Hoya Intermediate's officers have certain interests in the business combination that are described in this proxy statement/prospectus/consent solicitation statement, including, among other things: ownership interests in Hoya Topco as described in the section entitled "Beneficial Ownership of Securities" and executive compensation as described in the section entitled "Executive Compensation." Following the Transactions, the business affairs of Hoya Intermediate will be controlled by a board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco.

### **Reasons for the Approval of the Business Combination**

After careful consideration, the Horizon board of directors recommends that Horizon shareholders vote “FOR” each Proposal being submitted to a vote of the Horizon shareholders at the Horizon extraordinary general meeting.

For a more complete description of Horizon’s board of directors’ reasons for the approval of the business combination and their recommendation, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Horizon’s Board of Directors’ Reasons for the Approval of the Business Combination.”

### **Redemption Rights**

Under Horizon’s amended and restated memorandum and articles of association, holders of Horizon Class A ordinary shares may elect to have their shares redeemed for cash at the applicable redemption price per share, payable in cash, equal to the aggregate amount on deposit in the Trust Account as of two business days prior to the Closing, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the total number of Horizon Class A ordinary shares included as part of the units sold in the IPO and which remain outstanding, which redemption will completely extinguish public shareholders’ rights as shareholders (including the right to receive further liquidation distributions, if any); provided that Horizon will not redeem any public shares to the extent that such redemption would result in Horizon having net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act) of less than \$5,000,001. As of December 31, 2020, this would have amounted to approximately \$10.00 per share. Under Horizon’s amended and restated memorandum and articles of association, in connection with an initial business combination, a public shareholder, together with any affiliate or any other person with whom such stockholder is acting in concert of as a “group” (as defined under Section 13(d)(3) of the Exchange Act), is restricted from seeking redemption rights with respect to more than 15% of the public shares.

If a holder exercises its redemption rights, then such holder will be exchanging its Horizon Class A ordinary shares for cash and will no longer own Horizon Class A ordinary shares and will not participate in the future growth of Horizon, if any. Such a holder will be entitled to receive cash for its public shares only if it properly demands redemption and tenders its shares (either physically or electronically) to Horizon’s transfer agent in accordance with the procedures described herein. See the section entitled “Extraordinary General Meeting of Horizon Shareholders — Redemption Rights” for the procedures to be followed if you wish to redeem your shares for cash. A shareholder holding both Horizon’s public shares and Horizon IPO Public Warrants may redeem its public shares but retain the Horizon IPO Public Warrants, which if the business combination closes, will become warrants of Vivid Seats PubCo.

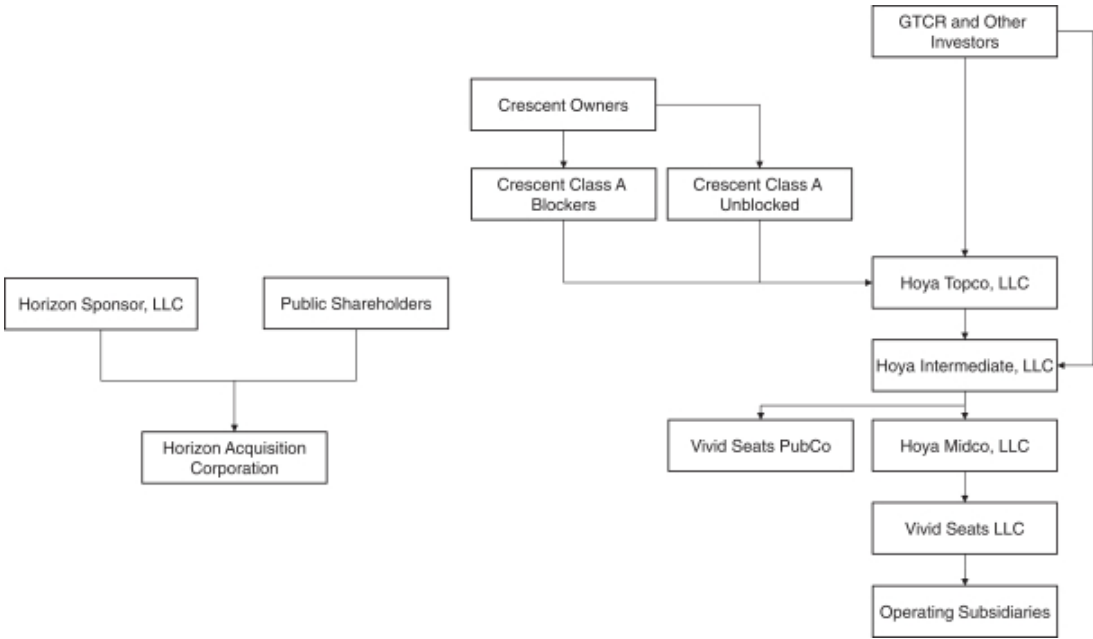
### **Impact of the Business Combination on Vivid Seats PubCo’s Public Float**

It is anticipated that, upon completion of the business combination and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo’s ownership will be as follows: (1) Horizon public shareholders will own approximately 19.9% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of Sponsor, will own approximately 1.8% of Vivid Seats PubCo’s outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by

Sponsor), of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a "controlled company" within the meanings of applicable Nasdaq listing rules. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo's shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement. These levels of ownership interest assume that no shares are elected to be redeemed in connection with the business combination. The PIPE Investors have agreed to purchase an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million in the PIPE Subscription. In this proxy statement/prospectus/consent solicitation statement, we assume that approximately \$769.0 million of the gross proceeds from the PIPE Subscription and funds held in the Trust Account will be used to fund (i) the business combination, (ii) the partial repayment of our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of approximately \$132.1 million under both the no redemption scenario and maximum redemption scenario, and (iii) the payment of certain transaction expenses. The ownership percentage with respect to Vivid Seats PubCo (a) does not take into account (1) Vivid Seats PubCo Warrants outstanding following the business combination or (2) the issuance of any shares upon completion of the business combination under the 2021 Plan, but (b) does include founder shares, which will automatically convert into shares of Vivid Seats Class A common stock on a one-for-one basis upon the consummation of the business combination (such shares of Vivid Seats Class A common stock will be subject to transfer restrictions). If the actual facts are different from these assumptions, the above levels of ownership interest will be different.

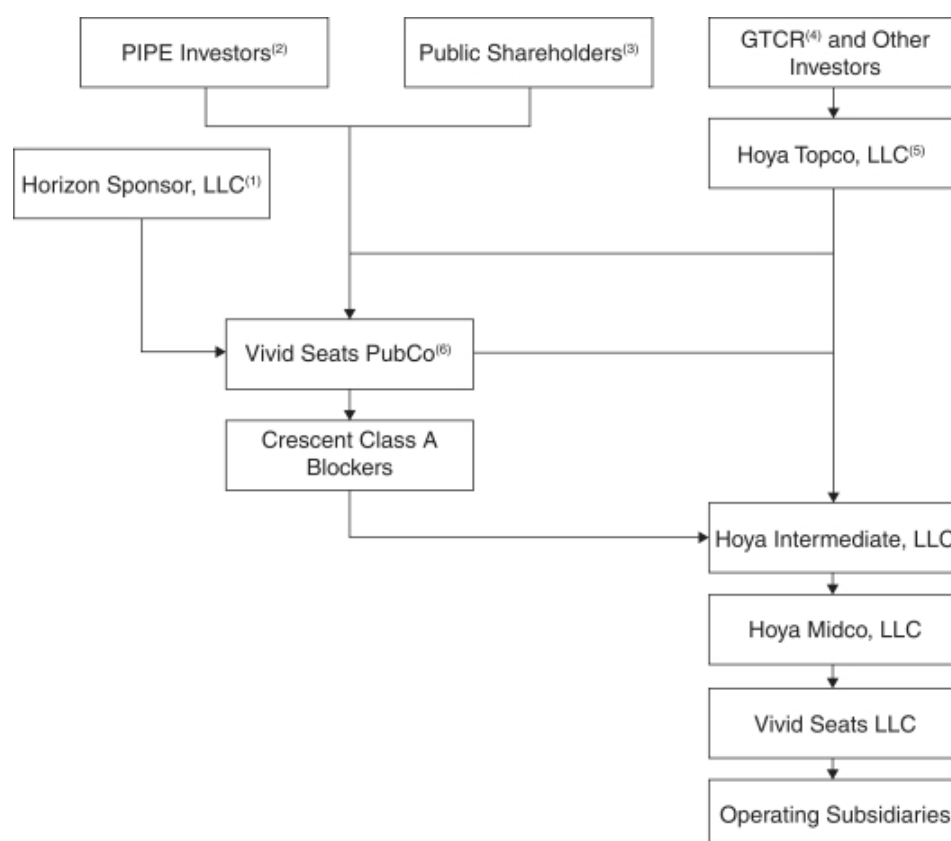
**Organizational Structure**

The following diagram represents the simplified structure of Horizon and Vivid Seats prior to the consummation of the business combination.





The following diagram, which is subject to change based upon any redemptions by current Horizon shareholders of public shares in connection with the business combination, illustrates the expected ownership structure of Vivid Seats PubCo immediately following the Closing.



- (1) Sponsor, together with certain of its affiliates, will own, in the case of a no redemptions scenario, (i) approximately 17.7% (assuming no exercise of Vivid Seat PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor) of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock). In the case of a maximum redemption scenario of Horizon Class A ordinary shares, Sponsor, together with the owners of founder shares, would own approximately 37.6% of Vivid Seats PubCo's outstanding common stock following the Closing. All such common stock shall be in the form of Vivid Seats Class A common stock.
- (2) The PIPE Investors (excluding Sponsor and certain of its affiliates) are expected to own approximately 1.8% of Vivid Seats PubCo's outstanding common stock following the Closing, assuming no redemptions of Horizon Class A ordinary shares. All such common stock shall be in the form of Vivid Seats Class A common stock.
- (3) Public Shareholders include the public shareholders of Horizon prior to consummation of the business combination. Such shareholders are expected to own approximately 19.9% of Vivid Seats PubCo's outstanding common stock following the Closing, assuming no redemptions of Horizon Class A ordinary shares. All such common stock shall be in the form of Vivid Seats Class A common stock.

- (4) Private Equity Owner and its affiliates beneficially control Hoya Topco, although they do not own 100% of the outstanding equity interests of Hoya Topco.
- (5) Hoya Topco is expected to own approximately 60.6% of Vivid Seats PubCo's outstanding common stock following the Closing, assuming no redemptions of Horizon Class A ordinary shares. All such common stock shall be in the form of Vivid Seats Class B common stock. By virtue of its ownership of all outstanding Vivid Seats Class B common stock, Hoya Topco will control Vivid Seats PubCo's business policies and affairs and will control any action requiring the general approval of its stockholders. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo's shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement. In addition, Hoya Topco will own approximately 60.6% of the outstanding Intermediate Common Units, which interests will be controlled by the Private Equity Owner for so long as it control Hoyal Topco. The business affairs of Hoya Intermediate will be controlled by a board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco. For each matter presented to the board of managers of Hoya Intermediate, the Vivid Seats PubCo designee will be entitled to two (2) votes and the Hoya Topco designee will be entitled to one (1) vote. Accordingly, Hoya Topco's ability to influence the operations of Hoya Intermediate following the Closing will be by virtue of its ownership of Vivid Seats PubCo common stock. See "Description of Vivid Seats PubCo Securities — Common Stock" and "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Second A&R LLCA."
- (6) Vivid Seats PubCo will directly and indirectly own approximately 39.4% of the outstanding Intermediate Common Units. The business affairs of Hoya Intermediate will be controlled by a board of managers. Such board of managers will be controlled by Vivid Seats PubCo. See "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Second A&R LLCA."

#### **Board of Directors of Vivid Seats PubCo Following the Business Combination**

Upon the Closing, the Vivid Seats Board will include nine (9) directors, one (1) of which will be the chief executive officer of Vivid Seats PubCo, five (5) of which will be designated by Hoya Topco (one (1) of which will be independent) and three (3) of which will be designated by Sponsor (two (2) of which will be independent).

Upon completion of the business combination, Vivid Seats PubCo's Private Equity Owner will control a majority of the combined voting power of all classes of Vivid Seats PubCo's outstanding voting shares and will have the ability to influence the election of its board of directors. As a result, Vivid Seats PubCo expects to be a controlled company within the meaning of the Nasdaq corporate governance standards, and may elect not to comply with certain Nasdaq corporate governance requirements, including the requirements that a majority of the board of directors consist of independent directors and that the nominating and governance committee and compensation committee be composed entirely of independent directors. These requirements will not apply to Vivid Seats PubCo as long as it remains a controlled company.

#### **Accounting Treatment**

The business combination will be accounted for as a reverse recapitalization in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Under this method of accounting, Vivid Seats PubCo has been treated as the "acquired" company for financial reporting purposes. This determination was primarily based on Hoya Intermediate having a relative majority of the voting power of the combined company, the

operations of Hoya Intermediate and its subsidiaries constituting the only ongoing operations of the combined company, and senior management of Hoya Intermediate comprising the majority of the senior management of the combined company.

Accordingly, for accounting purposes, the financial statements of the combined company will represent a continuation of the financial statements of Hoya Intermediate. The net assets of Vivid Seats PubCo will be stated at historical cost, with no goodwill or other intangible assets recorded.

### **Appraisal Rights**

Under Section 239 of the CICA, the holders of Horizon public shares will not have appraisal or dissenter rights in connection with the business combination. Holders of public shares should consult their Cayman Islands legal counsel regarding their rights under the CICA.

### **Other Proposals**

In addition to the proposal to approve and adopt the Transaction Agreement and the business combination, Horizon shareholders will be asked to vote on:

- a proposal to approve, by special resolution, the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* and to authorize the merger of Horizon with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation;
- the following three separate proposals to approve the following material differences between Horizon amended and restated memorandum and articles of association and the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws that will be the certificate of incorporation and bylaws of Vivid Seats PubCo following the Merger:
  - i. To authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, 40,000,000 shares of Horizon Class B ordinary shares, and 1,000,000 preference shares, par value \$0.0001 per share, to 500,000,000 shares of Vivid Seats Class A common stock, 250,000,000 shares of Vivid Seats Class B common stock and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo.
  - ii. To authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders' Agreement.
  - iii. To authorize that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain "exempted persons" (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo);
  - iv. To authorize that the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats Amended and Restated Bylaws will adopt Delaware as the exclusive forum for certain stockholder litigation;
  - v. To authorize all other changes in connection with the replacement of Horizon's amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation

statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from “Horizon Acquisition Corporation” to “Vivid Seats Inc.,” (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon’s status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon’s board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

- a proposal to approve, for purposes of complying with the applicable provisions of NYSE Listing Rule 312.03, the issuance of shares of Vivid Seats PubCo in connection with the business combination and the PIPE Subscription (the “NYSE Proposal”); and
- a proposal to approve the adjournment of the extraordinary general meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal.

For more information, see the sections entitled “Proposal No. 2 — The Merger Proposal,” “Proposal No. 3 — Organizational Documents Proposal A,” “Proposal No. 4 — Organizational Documents Proposal B,” “Proposal No. 5 — Organizational Documents Proposal C,” “Proposal No. 6 — Organizational Documents Proposal D,” “Proposal No. 7 — Organizational Documents Proposal E,” “Proposal No. 8 — The NYSE Proposal” and “Proposal No. 9 — The Adjournment Proposal.”

### **Date, Time and Place of Extraordinary General Meeting**

The extraordinary general meeting will be held at \_\_\_\_\_ a.m., local time, on \_\_\_\_\_, 2021, at the offices of Kirland & Ellis LLP located at 601 Lexington Avenue, New York, NY 10022 and via a live webcast available at \_\_\_\_\_, or such other date, time and place to which such meeting may be adjourned or postponed, to consider and vote upon the proposals.

### **Voting Power; Record Date for the Extraordinary General Meeting**

You will be entitled to vote or direct votes to be cast at the extraordinary general meeting if you owned shares of Horizon Class A ordinary shares or Horizon Class B ordinary shares at the close of business on \_\_\_\_\_, 2021, which is the record date for the extraordinary general meeting. You are entitled to one vote for each share of Horizon Class A ordinary shares or Horizon Class B ordinary shares that you owned as of the close of business on the record date. If your shares are held in “street name” or are in a margin or similar account, you should contact your broker, bank or other nominee to ensure that votes related to the shares you beneficially own are properly counted. On the record date, there were \_\_\_\_\_ shares of Horizon Class A ordinary shares and Horizon Class B ordinary shares outstanding in the aggregate, of which \_\_\_\_\_ are public shares and \_\_\_\_\_ are founder shares held by Sponsor and Horizon’s independent directors.

### **Proxy Solicitation**

Proxies may be solicited by mail. Horizon has engaged \_\_\_\_\_ to assist in the solicitation of proxies. If a shareholder grants a proxy, it may still vote its shares in person if it revokes its proxy before the extraordinary general meeting. A shareholder may also change its vote by submitting a later-dated proxy as described in the section entitled “Extraordinary General Meeting of Horizon Shareholders — Revoking Your Proxy.”

### **Quorum and Required Vote for Proposals for the Extraordinary General Meeting**

A quorum of Horizon shareholders is necessary to hold a valid meeting. A quorum will be present at the extraordinary general meeting if a majority of Horizon Class A ordinary shares and Horizon Class B ordinary shares outstanding and entitled to vote at the extraordinary general meeting is represented in person or by proxy. Abstentions will count as present for the purposes of establishing a quorum. As of the record date for the extraordinary general meeting, \_\_\_\_\_ ordinary shares would be required to achieve a quorum.

The approval of the Business Combination Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. The approval of the Merger Proposal requires a special resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of not less than two-thirds of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Accordingly, if a valid quorum is otherwise established, a shareholder's failure to vote by proxy or to vote in person at the extraordinary general meeting will have no effect on the outcome of any vote on the Proposals.

The Initial Shareholders have, pursuant to a letter agreement with Horizon, agreed to, among other things, to vote at any meeting of Horizon's shareholders, and in any action by written consent of Horizon's shareholders, all of their ordinary shares in favor of the adoption and approval of the Transaction Agreement, the transactions contemplated thereby, including the Merger, and the other approvals contemplated to be sought with respect thereto. As of the date of this proxy statement/prospectus/consent solicitation statement, the Initial Shareholders own approximately \_\_\_\_\_ % of the issued and outstanding Horizon Class A ordinary shares and \_\_\_\_\_ % of the issued and outstanding Horizon Class B ordinary shares.

### **Record Date for Consent Solicitation**

You will be entitled to deliver a Written Consent in response to the consent solicitation if you owned Horizon IPO Warrants at the close of business on \_\_\_\_\_, 2021, which is the record date for delivery of consents to the proposed Warrant Amendment. If your Horizon IPO Warrants are held in "street name" or are in a margin or similar account, you should contact your broker, bank or other nominee to ensure that your consent related to the Horizon IPO Warrants you beneficially own is properly delivered. On the record date, there were Horizon IPO Public Warrants and \_\_\_\_\_ Horizon IPO Private Placement Warrants outstanding.

### **Horizon's Solicitation of Written Consents**

In order to provide consent in the consent solicitation, holders are required to consent by executing the Written Consent (or requesting that their broker or nominee consent on their behalf) to the Warrant Amendment attached as *Annex M*. If approved, the Warrant Amendment would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation.

Specifically, as set forth in the proposed form of the Warrant Amendment attached thereto as *Annex M*, the Warrant Amendment proposes to, among other things: (i) amend the rights specific to the Horizon IPO Private Placement Warrants such that (A) the rights specific to such warrants are retained by the holder thereof

regardless of such holder's identity, (B) such warrants are no longer subject to redemption by Horizon at any price and (C) such warrants are no longer generally exercisable on a "cashless basis"; (ii) eliminate Horizon's ability to redeem any Horizon IPO Public Warrants unless the Horizon Class A ordinary shares are trading at a price equal to or in excess of \$18.00 per share; and (iii) remove certain language related to the treatment of Horizon IPO Warrants in the event of a tender offer for the shares underlying such warrants. For additional details please see the section entitled "Horizon's Solicitation of Written Consents — Proposed Amendment."

The consent solicitation will expire on the Consent Solicitation End Date, which is 11:59 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2021, or such later time and date to which Horizon may extend. The Written Consent must be received by Horizon by the Consent Solicitation End Date, as described in this proxy statement/prospectus/consent solicitation statement. If the Consent Period is extended, Horizon will make a public announcement of such extension by no later than 9:00 a.m., Eastern Daylight Time, on the next business day following the Consent Solicitation End Date as in effect immediately prior to such extension.

Horizon reserves the right at any time or from time to time to amend the consent solicitation, including by changing the terms of the Warrant Amendment. If Horizon makes a material change in the terms of the consent solicitation or the information concerning the consent solicitation, Horizon will extend the consent solicitation to the extent required by applicable law.

Effectiveness of the Warrant Amendment is conditioned upon receiving, by the Consent Solicitation End Date, the consent of holders of at least 65% of the outstanding Horizon IPO Public Warrants and, solely with respect to any amendments to the terms of the Horizon IPO Private Placement Warrants or any provision of the Warrant Agreement with respect to the Horizon IPO Private Placement Warrants, 65% of the outstanding Horizon IPO Private Placement Warrants. If requisite consents are obtained from holders of the Horizon IPO Warrants by the Consent Solicitation End Date, the Warrant Amendment will be effected by an amendment and restatement of the Warrant Agreement in the form of *Annex M* attached to the accompanying proxy statement/prospectus/consent solicitation statement, which is to be executed by Horizon and the Warrant Agent promptly following the Consent Solicitation End Date. Effectiveness of the Warrant Amendment is not conditioned upon consummation of the business combination.

If you elect to provide your consent, you may withdraw your consent at any time before the Consent Solicitation End Date by following the instructions in this proxy statement/prospectus/consent solicitation statement. If the Consent Solicitation End Date is extended, you may withdraw your consent at any time until the extended Consent Solicitation End Date.

The Sponsor currently holds 5,166,666 Horizon IPO Public Warrants and all of the Horizon IPO Private Placement Warrants and has agreed in the Transaction Agreement to use commercially reasonable efforts to revise the terms of the Horizon IPO Warrants such that the Horizon IPO Warrants be treated as equity under the rules and guidelines of the SEC at and after the closing of the Transactions, including using commercially reasonable efforts to obtain any shareholder or warrant holder approvals if necessary to accomplish the foregoing.

### **Recommendation to Horizon Shareholders**

Horizon's board of directors believes that each of the Business Combination Proposal, the Merger Proposal, Organizational Documents Proposal A, Organizational Documents Proposal B, Organizational Documents Proposal C, the NYSE Proposal and the Adjournment Proposal is in the best interests of Horizon and its shareholders and recommends that its shareholders vote "FOR" each of the Proposals to be presented at the extraordinary general meeting.

When you consider the recommendation of the board of directors in favor of approval of the Proposals, you should keep in mind that Sponsor, members of the board of directors and officers have interests in the business combination that are different from or in addition to (and which may conflict with) your interests as a shareholder. Please see the section entitled “Proposal No. 1 — The Business Combination Proposal — Interests of Certain Persons in the Business Combination.”

### **Emerging Growth Company**

Each of Horizon and Vivid Seats PubCo is an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act, and they may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in their periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. Each of Horizon and Vivid Seats PubCo has elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, Horizon and Vivid Seats PubCo, as emerging growth companies, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may limit comparability of Horizon’s and Vivid Seats PubCo’s financial statements with certain other public companies because of the potential differences in accounting standards used.

Vivid Seats PubCo will remain an emerging growth company until the earlier of: (1) the last day of the fiscal year (a) ending after the fifth anniversary of the closing of the business combination, (b) in which Vivid Seats PubCo has total annual gross revenue of at least \$1.07 billion or (c) in which Vivid Seats PubCo is deemed to be a large accelerated filer, which means the market value of Vivid Seats PubCo’s common equity that is held by non-affiliates exceeds \$700 million as of the prior June 30<sup>th</sup>; and (2) the date on which Vivid Seats PubCo has issued more than \$1.0 billion in non-convertible debt securities during the prior three-year period.

### **Risk Factors**

In evaluating the proposals set forth in this proxy statement/prospectus/consent solicitation statement, you should carefully read this proxy statement/prospectus/consent solicitation statement, including the annexes, and especially consider the factors discussed in the section entitled “Risk Factors.” Such risks include, but are not limited to:

*Risks related to Vivid Seats’ business and industry, including that:*

- The COVID-19 pandemic has had, and is likely to continue to have, a material negative impact on our business and operating results.
- Our business is dependent on the continued occurrence of large-scale sporting events, concerts and theater shows and on relationships with buyers, sellers and distribution partners and any change in such occurrence or relationships could adversely affect our business.

- Changes in Internet search engine algorithms or changes in marketplace rules could have a negative impact on traffic for our sites and ultimately, our business and results of operations.
- We face intense competition in the ticketing industry.
- Our business is dependent on the willingness of artists, teams and promoters to continue to support the secondary ticket market and any decrease in such support may result in decreased demand for our services.
- If we do not continue to maintain and improve our platform and brand or develop successful new solutions and enhancements or improve existing ones, our business will suffer.
- We may be adversely affected by the occurrence of extraordinary events or factors affecting concert, sporting and theater events.
- We may be unsuccessful in potential future acquisition endeavors.
- Due to our business' seasonality, our financial performance in particular financial periods may not be indicative of, or comparable to, our financial performance in subsequent financial periods.
- The failure to retain, motivate or integrate any of our senior management team or other skilled personnel could have an adverse effect on our business, financial condition or results of operations.
- The processing, storage, use and disclosure of personal data could give rise to liabilities as a result of governmental regulation, conflicting legal requirements or applications of privacy regulations.
- Unfavorable legislative outcomes, or outcomes in legal proceedings in which we may be involved, may adversely affect our business and operating results.
- System interruption and the lack of integration and redundancy in our systems and infrastructure may have an adverse impact on our business, financial condition and results of operations.
- Cyber security risks, data loss or other breaches of our network security could materially harm our business and results of operations.
- We may fail to adequately protect or enforce our intellectual property rights or face potential liability and expense for legal claims alleging that the operation of our business infringes intellectual property rights of third parties.
- Our payments system depends on third-party providers.
- The agreements governing our indebtedness impose restrictions on us that limit the discretion of management in operating our business.
- We depend on the cash flows of our subsidiaries in order to satisfy our obligations, and we may not be able to generate sufficient cash flows or raise the additional capital necessary to fund our liquidity needs.

*Risks related to the business combination and Horizon, including that:*

- Sponsor has agreed to vote in favor of the proposals described herein to be presented at the extraordinary general meeting of shareholders, regardless of how Horizon's public shareholders vote.
- No third-party valuation has been obtained in determining whether to pursue the business combination.
- Sponsor and Horizon's directors have interests that are different from, or in addition to (and which may conflict with), the interests of Horizon's shareholders.
- The announcement of the proposed business combination could disrupt Vivid Seats' business.
- Historical financial results, unaudited pro forma financial information and financial projections with respect to Vivid Seats may not prove to be reflective of what Vivid Seats' actual financial results would be if it were a public company.



- If third parties bring claims against Horizon, the proceeds held in the Trust Account could be reduced.
- Horizon's shareholders may be held liable for claims by third parties against Horizon to the extent of distributions received by them upon redemption of their shares.

*Risks related to the redemption, including that:*

- If shareholders fail to comply with the redemption requirements specified in this proxy statement/prospectus, they will not be entitled to redeem their public shares.
- If a public shareholder fails to receive notice of Horizon's offer to redeem public shares in connection with the business combination such shares may not be redeemed.
- There is no guarantee that a shareholder's decision whether to redeem its shares for a pro rata portion of the Trust Account will put the shareholder in a better future economic position.

*Risks if the business combination is not consummated, including that:*

- Horizon may redeem its public shares and liquidate, in which case its public shareholders may receive only \$10.00 per share, or less in certain circumstances, and Horizon's warrants will expire worthless.
- You will not have any rights or interests in funds from the Trust Account, except under certain limited circumstances and you may be forced to sell your public shares or Horizon IPO Public Warrants, potentially at a loss.
- If the funds not being held in the Trust Account are insufficient to allow Horizon to operate until at least August 25, 2022 (or if such date is extended at a duly called meeting of Horizon's shareholders, such later date), Horizon may be unable to complete its initial business combination.

*Risks related to our organizational structure after the business combination, including that:*

- Our Private Equity Owner will control us, and its interest may conflict with ours or yours in the future.
- Following the Closing, we will be a "controlled company" within the meaning of Nasdaq listing standards.
- Our only material asset will be our direct and indirect interests in Hoya Intermediate.
- The Tax Receivable Agreement will require us to make cash payments to Hoya Topco.
- Our ability to pay dividends may be limited by our holding company structure and Delaware law.

### **U.S. Federal Income Tax Considerations**

For a discussion summarizing the U.S. federal income tax considerations of the Merger, the exercise of redemption rights and the adoption of the Warrant Amendment, please see "U.S. Federal Income Tax Considerations."

## SELECTED HISTORICAL FINANCIAL INFORMATION OF HORIZON

The following table shows selected historical financial information of Horizon for the periods and as of the dates indicated. Horizon's statement of operations data and cash flow data for the period from June 12, 2020 (inception) through December 31, 2020 as restated and balance sheet data as of December 31, 2020 as restated are derived from Horizon's audited financial statements contained in its Annual Report on Form 10-K/A for the year ended December 31, 2020 filed with the SEC and included elsewhere in this proxy statement/prospectus/consent solicitation statement. Horizon's unaudited condensed statement of operations data and cash flow data for the three months ended March 31, 2021 and condensed balance sheet data as of March 31, 2021 are derived from Horizon's unaudited financial statements contained in its Quarterly Report on Form 10-Q for the quarter ended March 31, 2021 filed with the SEC and included elsewhere in this proxy statement/prospectus/consent solicitation statement. The unaudited selected historical financial information set forth below has been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of such information.

The following selected historical financial information should be read together with the consolidated financial statements and accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations of Horizon" appearing elsewhere in this proxy statement/prospectus/consent solicitation statement. The selected historical financial information in this section is not intended to replace Horizon's consolidated financial statements and the related notes. The historical financial information presented here is not necessarily indicative of the results that may be expected in the future.

	March 31, 2021 (unaudited)	For the period from June 20, 2020 (inception) through December 31, 2020 (As restated)
<b>Statement of Operations Data:</b>		
General and administrative expenses	\$ 962,762	\$ 538,313
Loss from operations	(962,762)	(538,313)
Other income		
Change in fair value of derivative warrant liabilities	8,628,420	(16,517,250)
Interest earned from interest-bearing cash account	240	(578,950)
Net gain on investments held in Trust Account	8,037	18,465
Net income	<u>\$ 7,673,935</u>	<u>\$ (17,616,048)</u>
Basic and diluted weighted average shares outstanding of Class A ordinary shares	<u>54,398,433</u>	<u>54,364,337</u>
Basic and diluted net income per share, Class A ordinary shares	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Basic and diluted weighted average shares outstanding of Class B ordinary shares	<u>13,599,608</u>	<u>13,269,125</u>
Basic and diluted net income per share, Class B ordinary shares	<u>\$ 0.56</u>	<u>\$ (1.33)</u>
<b>Condensed Balance Sheet Data (At Period End):</b>		
Total assets	\$545,086,831	\$ 545,277,797
Total liabilities	\$ 41,940,281	\$ 49,805,181
Class A ordinary shares; 49,814,654 and 49,047,261 shares subject to possible redemption at \$10.00 per share as of March 31, 2021 and December 31, 2020, respectively	\$498,146,540	\$ 490,472,610

	March 31, 2021 <u>(unaudited)</u>	For the period from June 20, 2020 (inception) through December 31, 2020 (As restated)
<b>Shareholder's Equity:</b>		
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued and outstanding	\$ —	\$ —
Class A ordinary shares, \$0.0001 par value; 400,000,000 shares authorized; 4,583,779 and 5,351,172 shares issued and outstanding (excluding 49,814,654 and 49,047,261 shares subject to possible redemption) as of March 31, 2021 and December 31, 2020, respectively	458	535
Class B ordinary shares, \$0.0001 par value; 40,000,000 shares authorized; 13,599,608 shares issued and outstanding as of March 31, 2021 and December 31, 2020, respectively	1,360	1,360
Additional Paid-in Capital	14,940,305	22,614,159
Accumulated Deficit	(9,942,113)	(17,616,048)
Total shareholders' equity	<u>\$ 5,000,010</u>	<u>\$ 5,000,006</u>
<b>Cash Flow Data:</b>		
Net cash used in operating activities	\$ (142,759)	\$ (487,392)
Net cash used in investing activities	—	(543,984,330)
Net cash provided by financing activities	—	545,413,196

## SELECTED HISTORICAL AND PRO FORMA FINANCIAL INFORMATION OF VIVID SEATS

The following table shows selected historical financial information of Vivid Seats for the periods and as of the dates indicated. The selected historical financial information of Vivid Seats as of and for the years ended December 31, 2019 and 2020 was derived from the audited historical consolidated financial statements of Vivid Seats included elsewhere in this proxy statement/prospectus/consent solicitation statement. The selected historical financial information of Vivid Seats for the three months ended March 31, 2020 and 2021 and as of March 31, 2021 was derived from the unaudited historical consolidated financial statements included elsewhere in this proxy statement/prospectus/consent solicitation statement. The unaudited selected historical financial information set forth below has been prepared on the same basis as our audited consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of such information. Vivid Seats, prior to the consummation of the Transactions, refers to Hoya Intermediate and its consolidated subsidiaries.

The following selected historical financial information should be read together with the consolidated financial statements and accompanying notes and “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of Vivid Seats*” appearing elsewhere in this proxy statement/prospectus/consent solicitation statement. The selected historical financial information in this section is not intended to replace Vivid Seats’ consolidated financial statements and the related notes. The historical financial information presented here is not necessarily indicative of the results that may be expected in the future.

	<b>Years Ended December 31,</b>		<b>Three Months Ended</b>	
	<b>2019</b>	<b>2020</b>	<b>March 31,</b>	<b>2021</b>
	<b>(in thousands except unit and per unit data)</b>			
Revenues	\$ 468,925	\$ 35,077	\$ 69,661	\$ 24,114
<b>Costs and expenses:</b>				
Cost of revenues (exclusive of depreciation and amortization shown separately below)	103,334	22,937	19,868	3,496
Marketing and selling	178,446	38,121	31,947	7,955
General and administrative	104,004	67,952	23,159	16,300
Depreciation and amortization	93,078	48,247	23,897	295
Impairment charges	—	573,838	—	—
<b>Loss from operations</b>	<b>\$ (9,937)</b>	<b>\$ (716,018)</b>	<b>\$ (29,210)</b>	<b>\$ (3,932)</b>
Other expenses				
Interest expense – net	41,497	57,482	9,293	16,319
Loss on extinguishment of debt	2,414	685	—	—
<b>Net loss</b>	<b>\$ (53,848)</b>	<b>\$ (774,185)</b>	<b>\$ (38,503)</b>	<b>\$ (20,251)</b>
Net loss per unit attributable to Common Unit holders, basic and diluted:	\$ (682,472)	\$ (7,953,192)	\$ (446,641)	\$ (270,730)
Weighted average Common Units outstanding, basic and diluted	100	100	100	100

	As of December 31,		As of
	2019	2020	March 31, 2021
<b>Consolidated Balance Sheet Data:</b>			
	(in thousands)		
Current assets	\$ 129,917	\$ 408,115	\$ 440,208
Non-current assets	1,367,132	751,015	752,124
Total assets	1,497,049	1,159,130	1,192,332
Current liabilities	163,239	331,271	373,298
Non-current liabilities	608,441	871,413	881,505
Total liabilities	771,680	1,202,684	1,254,803
Redeemable preferred units	207,093	228,227	235,049
Accumulated deficit	(252,490)	(1,026,675)	(1,046,926)
Total members' equity (deficit)	\$ 518,276	\$ (271,781)	\$ (297,520)

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
(in thousands)				
<b>Consolidated Statements of Cash Flows Data:</b>				
Net cash provided by (used in) operating activities	\$ 76,478	\$ (33,892)	\$ 11,130	\$ 30,761
Net cash used in investing activities	(40,155)	(7,605)	(3,113)	(1,726)
Net cash provided by (used in) financing activities	(55,462)	245,545	48,953	(1,603)

### Key Performance Indicators and Non-GAAP Financial Measure

Vivid Seats reviews a number of operational and financial metrics, including the following, which are used to measure performance of the business, identify trends, and make strategic decisions.

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
(in thousands)				
Marketplace gross order value ("Marketplace GOV") <sup>(1)</sup>	\$ 2,279,773	\$ 347,259	\$ 403,377	\$ 116,473
Total Marketplace orders <sup>(2)</sup>	7,185	1,066	1,252	293
Total Resale orders <sup>(3)</sup>	303	49	45	13
Adjusted EBITDA <sup>(4)</sup>	\$ 119,172	\$ (80,204)	\$ 1,179	\$ 4,187

- (1) Marketplace GOV represents the total transactional amount of Marketplace segment orders placed on the Vivid Seats platform in a period, inclusive of fees, exclusive of taxes, and net of event cancellations that occurred during that period. Marketplace GOV was negatively impacted by event cancellations in the amount of \$22.2 million during the year ended December 31, 2019 and \$216.0 million during the year ended December 31, 2020. Marketplace GOV was negatively impacted by event cancellations in the amount of \$52.8 million during the three months ended March 31, 2020 and \$18.5 million during the three months ended March 31, 2021.
- (2) Total Marketplace orders represents the volume of Marketplace segment orders placed on the Vivid Seats platform during a period, net of event cancellations occurring during the period. During the year ended December 31, 2019, the Marketplace segment had 54,961 event cancellations, compared to 549,085 event cancellations during the year ended December 31, 2020. During the three months ended March 31, 2020, the Marketplace segment had 141,027 event cancellations, compared to 51,775 event cancellations during the three months ended March 31, 2021. A Marketplace order may include more than one ticket.
- (3) Total Resale orders represents the volume of Resale segment orders sold by the Vivid Seats' resale team in a period, net of event cancellations that occurred during that period. During the year ended December 31, 2019, the Resale segment had 1,517 event cancellations, compared to 20,644 event cancellations during the year ended December 31, 2020. During the three months ended March 31, 2020, the Resale segment had

9,978 event cancellations, compared to 1,141 event cancellations during the three months ended March 31, 2021. A Resale order may include more than one ticket.

- (4) Adjusted EBITDA is not a measure defined under GAAP. See below for further information about how Vivid Seats calculates adjusted EBITDA.

Adjusted EBITDA is a non-GAAP measure frequently used by research analysts, investors and other interested parties to evaluate companies. Vivid Seats believes that this measure is helpful in highlighting trends in its operating results, because it excludes the impact of items that are outside the control of management or not reflective of its ongoing operations and performance.

Adjusted EBITDA is a measure not defined under GAAP. It has limitations, because it excludes certain types of expenses and it does not reflect changes in working capital needs. Furthermore, other companies may calculate adjusted EBITDA or similarly titled measures differently, limiting their usefulness as comparative measures.

Adjusted EBITDA is presented here as a supplemental measure only. You are encouraged to evaluate each adjustment. The following is a reconciliation of Adjusted EBITDA to its most directly comparable GAAP measure, net loss.

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
	(in thousands)			
Net loss	\$ (53,848)	\$ (774,185)	\$ (38,503)	\$ (20,251)
Interest expense – net	41,497	57,482	9,293	16,319
Depreciation and amortization	93,078	48,247	23,897	295
Sales tax liability <sup>(1)</sup>	10,045	6,772	4,913	2,261
Transaction costs <sup>(2)</sup>	8,857	359	359	3,546
Equity-based compensation <sup>(3)</sup>	5,174	4,287	1,186	1,091
Senior management transition costs <sup>(4)</sup>	2,706	—	—	—
Loss on extinguishment of debt <sup>(5)</sup>	2,414	685	—	—
Litigation, settlements and related costs <sup>(6)</sup>	2,256	1,347	34	641
Change to annual bonus program <sup>(7)</sup>	2,810	—	—	—
Customer loyalty program stand-up costs <sup>(8)</sup>	3,223	—	—	—
Impairment charges <sup>(9)</sup>	—	573,838	—	—
Loss on asset disposals <sup>(10)</sup>	960	169	—	—
Severance related to COVID-19 <sup>(11)</sup>	—	795	—	285
Adjusted EBITDA	<u>\$119,172</u>	<u>\$ (80,204)</u>	<u>\$ 1,179</u>	<u>\$ 4,187</u>

- (1) These expenses relate to sales tax liabilities incurred during the periods presented. Vivid Seats incurs sales tax expenses in jurisdictions where it expects to remit sales tax payments. Vivid Seats does not currently collect sales tax from ticket buyers under its existing IT configuration. Vivid Seats is in the process of upgrading its IT infrastructure, which will enable it to collect sales tax from ticket buyers going forward. Vivid Seats expects these upgrades to be complete by the end of 2021.
- (2) Transaction costs incurred during the years ended December 31, 2019 and 2020 consist primarily of transaction and transition related fees and expenses incurred in relation to completed and attempted acquisitions. During 2019, Vivid Seats completed the acquisition of Fanxchange, in addition to pursuing an attempted acquisition that was ultimately abandoned. Acquisition-related transaction costs consist of legal, accounting, tax and other professional fees, as well as personnel-related costs, which consist of severance and retention bonuses. Transition costs, which primarily consist of personnel costs associated with the integration of the Fanxchange platform into Vivid Seats, reflected above were incurred in the first 12 months following the completed acquisition of Fanxchange. Vivid Seats does not believe these acquisition-related costs to be representative of normal, recurring, cash operating expenses.

During the three months ended March 31, 2021, Vivid Seats incurred transaction costs related to the Transactions. These costs consist primarily of legal, accounting, tax and other professional fees, which are non-recurring in nature.

- (3) Vivid Seats incurs equity-based compensation expenses, which it does not consider to be indicative of its core operating performance.
- (4) During 2019, Vivid Seats incurred costs associated with the transition to its current senior management team, including its current Chief Executive Officer. These costs include recruiting costs and costs to compensate Vivid Seats' new Chief Executive Officer for benefits forfeited at his previous employer.
- (5) Losses incurred in 2019 related to the repayment of Vivid Seats' \$40 million second lien term loan. Losses incurred in 2020 resulted from the retirement of Vivid Seats' revolving credit facility in May 2020.
- (6) These expenses relate to external legal costs and settlement costs incurred, which were unrelated to Vivid Seats' core business operations.
- (7) Vivid Seats restructured its employee incentive compensation plan during 2019, which resulted in \$2.8 million of incremental costs.
- (8) During August 2019, Vivid Seats initiated the Vivid Seats Rewards customer loyalty program. The company incurred \$3.2 million of initial stand-up costs related to the commencement of the program. These stand-up costs consist primarily of customer incentives and marketing costs, which are not expected to reoccur.
- (9) During 2020, Vivid Seats incurred impairment charges triggered by the effects of the COVID-19 pandemic. The impairment charges resulted in a reduction in the carrying values of the company's goodwill, indefinite-lived trademark, definite-lived intangible assets, and other long-lived assets. See Vivid Seats' audited financial statements included elsewhere in this proxy statement/prospectus/consent solicitation statement for additional information.
- (10) During 2019 and 2020, Vivid Seats incurred approximately \$1.0 million and \$0.2 million, respectively, related to asset disposals, which are not considered indicative of its core operating performance.
- (11) These charges relate to severance costs resulting from significant reductions in employee headcount during 2020 due to the effects of the COVID-19 pandemic.

### Summary Unaudited Pro Forma Condensed Combined Financial Information

The summary unaudited pro forma condensed combined statement of operations for the three months ended March 31, 2021 combines the unaudited condensed statement of operations of Horizon for the three months ended March 31, 2021 with the unaudited condensed consolidated statement of operations of Hoya Intermediate for the three months ended March 31, 2021 and gives effect to the Transactions as if they had occurred on January 1, 2020. The summary unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 combines the audited statement of operations of Horizon for the year ended December 31, 2020 with the audited consolidated statement of operations of Hoya Intermediate for the year ended December 31, 2020 and gives effect to the Transactions as if they had occurred on January 1, 2020. The summary unaudited pro forma condensed combined balance sheet as of March 31, 2021 combines the unaudited condensed balance sheet of Horizon as of March 31, 2021 with the unaudited condensed consolidated balance sheet of Hoya Intermediate as of March 31, 2021, giving effect to the Transactions and related adjustments as if they had been consummated on that date.

The summary unaudited pro forma condensed combined financial information has been derived from and should be read in conjunction with the unaudited pro forma condensed combined financial information, including the notes thereto, which is included in this proxy statement/prospectus/consent solicitation statement under “*Unaudited Pro Forma Condensed Combined Financial Information.*”

The summary unaudited pro forma condensed combined financial information is presented for informational purposes only. The summary unaudited pro forma condensed combined financial information does not purport to represent what the combined company’s results of operations or financial condition would have been had the specified transactions actually occurred on the dates indicated, and does not purport to project the combined company’s results of operations or financial condition for any future period or as of any future date. The summary unaudited pro forma condensed combined financial information does not reflect any cost savings that may be realized as a result of the Transactions. Additionally, the unaudited pro forma adjustments made in the summary unaudited pro forma condensed combined financial information, which are described in those notes, are preliminary and may be revised.

	Pro Forma Combined (Assuming No Redemptions)	Pro Forma Combined (Assuming Maximum Redemptions)
	(in thousands, except unit/share and per unit/share amounts)	
Selected Unaudited Pro Forma Condensed Combined Statement of Operations Data for the Three Months Ended March 31, 2021:		
Revenues	\$ 24,114	\$ 24,114
Net income	1,950	1,950
Net income attributable to Vivid Seats PubCo	\$ 768	\$ 768
Basic and diluted weighted average shares outstanding of Class A ordinary shares	76,948,433	76,948,433
Basic and diluted net income per share, Class A ordinary shares	\$ 0.01	\$ 0.01



	Pro Forma Combined (Assuming No Redemptions)	Pro Forma Combined (Assuming Maximum Redemptions)
	(in thousands, except unit/share and per unit/share amounts)	
Selected Unaudited Pro Forma Condensed Combined Statement of Operations Data for the Year Ended December 31, 2020:		
Revenues	\$ 35,077	\$ 35,077
Net loss	(823,965)	(823,965)
Net loss attributable to Vivid Seats PubCo	\$ (324,642)	\$ (324,642)
Basic and diluted weighted average shares outstanding of Class A ordinary shares	76,948,433	76,948,433
Basic and diluted net loss per share, Class A ordinary shares	\$ (4.22)	\$ (4.22)
Selected Unaudited Pro Forma Condensed Combined Balance Sheet Data as of March 31, 2021:		
Total assets	\$ 1,190,863	\$ 1,190,863
Total liabilities	871,882	871,882
Non controlling interest	193,302	193,302
Total members'/stockholders' equity (deficit)	\$ 125,679	\$ 125,679

## MARKET PRICE, TICKER SYMBOL AND DIVIDEND INFORMATION

### Horizon

#### *Market Price and Ticker Symbol*

Horizon Class A ordinary shares, the units and the Horizon Public IPO Warrants are currently listed on the NYSE under the symbols “HZAC,” “HZAC.U” and “HZAC WS,” respectively.

The closing price of the Horizon Class A ordinary shares, the units and the Horizon Public IPO Warrants on April 21, 2021, the last trading day before announcement of the execution of the Transaction Agreement, was \$9.80, \$10.00 and \$1.11, respectively. As of \_\_\_\_\_, 2021, the record date for the extraordinary general meeting, the most recent closing price for each Horizon Class A ordinary share, unit and Horizon IPO Public Warrant was \$ \_\_\_\_\_, \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively.

### Holders

As of December 31, 2020, 2021, there were two holders of record of Horizon Class A ordinary shares, one holder of record of Horizon Class B ordinary shares, two holders of record of the units and two holders of record of the Horizon Public IPO Warrants. The number of holders of record does not include a substantially greater number of “street name” holders or beneficial holders whose Horizon Class A ordinary shares, units and Horizon Public IPO Warrants are held of record by banks, brokers and other financial institutions.

#### *Dividend Policy*

Horizon has not paid any cash dividends on its ordinary shares to date and does not intend to pay any cash dividends prior to the completion of the business combination.

Following the completion of the business combination, Vivid Seats PubCo will be a holding company with no material assets other than its ownership of equity interests in Hoya Intermediate. As such, Vivid Seats PubCo will not have any independent means of generating revenue. However, management of Vivid Seats PubCo expects to cause Hoya Intermediate to make distributions to its members, including Vivid Seats PubCo, in an amount at least sufficient to allow Vivid Seats PubCo to pay all applicable taxes, to make payments under the Tax Receivable Agreement, and to pay Vivid Seats PubCo’s corporate and other overhead expenses.

Vivid Seats PubCo has not paid any cash dividends on its Vivid Seats Class A common stock to date and does not intend to pay cash dividends prior to the completion of the business combination. The payment of cash dividends on shares of Vivid Seats Class A common stock in the future will be within the discretion of Vivid Seats PubCo’s board of directors at such time, and will depend on numerous factors, including:

- general economic and business conditions;
- Vivid Seats PubCo’s strategic plans and prospects;
- Vivid Seats PubCo’s business and investment opportunities;
- Vivid Seats PubCo’s financial condition and operating results, including its cash position and its net income;
- working capital requirements and anticipated cash needs;
- contractual restrictions and obligations, including payment obligations pursuant to the Tax Receivable Agreement and restrictions pursuant to any credit facility; and
- legal, tax and regulatory restrictions.

**Vivid Seats PubCo**

There is no public market for shares of Vivid Seats PubCo's common stock.

## RISK FACTORS

*Horizon shareholders should carefully consider the following risk factors, together with all of the other information included in this proxy statement/prospectus/consent solicitation statement, before they decide whether to vote or instruct their vote to be cast to approve the relevant proposals described in this proxy statement/prospectus/consent solicitation statement.*

*Unless the context otherwise requires, all references in this section to the “Company,” “we,” “us” or “our” refer to the business of Vivid Seats prior to the Closing, which will be the business of Vivid Seats PubCo and its subsidiaries following the Closing. In addition, the risks relating to the COVID-19 pandemic may also have the effect of significantly heightening many of the other risks associated with our business and an investment in our common shares.*

### **Risks Relating to the COVID-19 Pandemic**

***The global COVID-19 pandemic has had, and is likely to continue to have, a material negative impact on our business and operating results. The ultimate magnitude of this impact will depend on a variety of factors, including the duration of the pandemic, the availability and acceptance of vaccines and other mitigation efforts, restrictions or new operational requirements in place or that result as our operations recommence on a jurisdiction by jurisdiction basis, the state of both the U.S. and global economies as a result of the pandemic, and the public’s willingness to attend events with large numbers of people, all of which are unknowable at this time.***

The global spread and impact of the COVID-19 pandemic is complex, unpredictable, and continuously evolving and has resulted in significant disruption and additional risks to our business, the entertainment industry, and the global economy. The COVID-19 pandemic has led governments and other authorities around the world to impose measures intended to control its spread, including restrictions on large gatherings of people, travel bans, border closings and restrictions, business closures, quarantines, shelter-in-place orders, and social distancing measures. As a result, in mid-March 2020, as the unprecedented impact of the global COVID-19 pandemic became clearer, concert promoters, venue operators, sports leagues and theaters around the globe shut down. Our business depends on concert, sporting and theater events in order to generate most of our revenue from ticket sales in the secondary ticket market. As of today, certain sports leagues have recommenced, but they have largely done so either without fans or at reduced capacity, and thus without the typical need for ticketing. There has also been extremely limited concert and theater activity with events that are occurring generally having reduced capacity. Until such time as fans are allowed at sporting events, concerts and theatrical performances in meaningful numbers, our revenue will be negatively impacted and it is possible these circumstances continue for a longer period of time than currently anticipated. For example, revenues during the year ended December 31, 2020 decreased \$433.8 million as compared to the year ended December 31, 2019 and \$45.5 million during the three months ended March 31, 2021 as compared to the three months ended March 31, 2020.

Due to the unprecedented nature of the global COVID-19 pandemic and its impacts on our business, our ability to forecast our cash inflows is hampered, and therefore our focus is on forecasting and managing operating costs and cash outflows. At this time, it is impossible to know or predict when events will be held at a pre-pandemic scope and scale as national and local governments around the world continue to enforce various restrictions on large gatherings. These restrictions have largely remained in place and continue to impact the ability to host large-scale events. It is currently unclear as to what restrictions will be placed on future events.

We face ancillary risks and uncertainties arising from the global COVID-19 pandemic in addition to the shutdown or limitation of concert, sporting and theater events. COVID-19 may also precipitate or aggravate other risk factors described herein, which have had, and may continue to have, a material negative impact on our business and operating results. Many of these risks and uncertainties may extend beyond the duration of the current shutdowns due to the uncertainty around how the live music, sporting and theater industries will change

as a result of the pandemic. The risks and uncertainties described herein should be read in conjunction with those set forth below. Such additional or attendant risks and uncertainties include, among other things:

- the impact of any lingering economic downturn or recession resulting from the pandemic, including without limitation any reduction in discretionary spending or confidence for both buyers and sellers, that would result in a decline in ticket sales and attendance;
- a reduction in the profitability of our operations when concert, sporting and theater events resume, due to governmental restrictions or safety precautions and protocols voluntarily undertaken, such as the potential that venues may not be able to be filled to capacity due to spacing and social distancing limitations, which could limit the number of tickets sold;
- the impact on our workforce, which may include the loss of key personnel as employees find other employment and lowered employee morale or inability to replace hourly/seasonal workforce, all of which may negatively impact our ability to capitalize on opportunities and conduct our operations in the future;
- potential decreased willingness or ability for artists to tour due to varying restrictions across jurisdictions, including the possibility that national or sub-national borders are closed to travel, which could reduce the demand for our services;
- potential changes to consumer preferences for consumption of live music, sporting or theater events due to fear of, or restrictions on, large gatherings;
- loss of ticketing sales due to the economic impacts of the pandemic whereby certain venue operators are no longer in operation, reducing the number of events our marketplace can serve;
- the inability to pursue expansion opportunities or acquisitions due to capital constraints;
- the future availability or increased cost of insurance coverage; and
- the incurrence of additional expenses related to compliance, precautions and management of our company during and after the pandemic.

The likelihood of the realization or intensification of these risks and uncertainties and the ultimate magnitude of their impact on us are not knowable or quantifiable at this time. The global COVID-19 pandemic and its impacts may continue to endure for an unknown period of time. In addition, as has already occurred in various locations, the potential exists for additional waves of the pandemic after the current wave of infections subsides. In addition, new COVID-19 variants may emerge, which could lead to additional restrictions being put into place for a greater duration of time. Different jurisdictions will lift social distancing guidelines and restrictions on gatherings of people at different times and will have different rules in place thereafter. The longer the duration of the global COVID-19 pandemic, and the greater the ancillary and lingering effects, the greater the negative impact on us and our results of operations will be. While vaccination programs have begun around the world, the ultimate impact of such programs on the pandemic and its duration, including the ability to effectively and widely manufacture and distribute vaccines and the acceptance of the vaccine by the general population, remain unknown. Moreover, even after restrictions on gatherings are lifted and vaccines are more widely distributed and available, the public's willingness to attend large events may remain depressed for a significant length of time, and we cannot predict if and when demand to attend such events will return to pre-COVID-19 levels.

In addition, due to the reduction in cash flows we have experienced from the global COVID-19 pandemic, we have proactively taken a number of steps to enhance our liquidity position, such as streamlining of expenses and implementation of policies to provide customers with options other than cash refunds upon event cancellations. Our decreased cash flows have heightened and intensified the risks described under the "Risks Relating to Our Leverage" section of the risk factors included below. As such, there can be no assurances that we will remain in compliance with the covenants in our Term Loan Facilities (as defined below), or that we would be able to obtain waivers or amendments in order to avoid default.

We will continue to evaluate and explore additional mechanisms to attempt to ensure that we have adequate capital to fund our business, including through the issuance and sale of additional debt or equity securities. The

terms of future debt agreements could include more restrictive covenants, or require incremental collateral, which may further restrict our business operations or be unavailable due to our covenant restrictions then in effect. There is no guarantee that debt financings will be available in the future to fund our obligations, or that they will be available on terms consistent with our expectations. Additionally, the impact of the global COVID-19 pandemic on the financial markets could adversely impact our ability to raise funds.

### **Risks Relating to Our Business and the Live Events and Ticketing Industries**

***Our business is dependent on the continued occurrence of large-scale sporting events, concerts and theater shows and any decrease in the number of such events may result in decreased demand for our services.***

Ticket sales are sensitive to fluctuations in the number of entertainment, sporting and theater events and activities offered by promoters, teams and facilities, and adverse trends in the entertainment, sporting and leisure event industries could adversely affect our business, financial condition and results of operations. We rely on third parties to create and perform at live music, sporting and theater events, and any unwillingness to tour, lack of availability of popular artists or decrease in the number of games or performances held could limit our ability to generate revenue. Accordingly, our success depends, in part, upon the ability of these third parties to correctly anticipate public demand for particular events, as well as the availability of popular artists, entertainers and teams, and any decrease in availability or failure to anticipate public demand could result in reduced demand for our services, which would adversely affect our business, financial condition and results of operations.

***Our business depends on relationships with buyers, sellers and distribution partners, and any adverse changes in these relationships could adversely affect our business, financial condition and results of operations.***

Our business is dependent on maintaining our deep and longstanding relationships with the parties that use our platform to buy and sell tickets, including individual customers, ticket sellers, and distribution partners that sell tickets to consumers using our ticket inventory, payment platform and customer service. We cannot provide assurance that we will be able to maintain existing relationships, or enter into or maintain new relationships, on acceptable terms, if at all, and the failure to do so could have a material adverse effect on our business, financial condition and results of operations. Another important component of our success is our ability to maintain existing and build new relationships with parties in the ticketing ecosystem. Any adverse change in these relationships, including the inability of these parties to fulfill their obligations to our business for any reason, could adversely affect our business, financial condition and results of operations.

***Changes in Internet search engine algorithms and dynamics, or search engine disintermediation, or changes in marketplace rules could have a negative impact on traffic for our sites and ultimately, our business and results of operations.***

We rely heavily on Internet search engines, such as Google, to generate traffic to our website, through a combination of organic and paid searches. Search engines frequently update and change the logic that determines the placement and display of results of a user's search, such that the purchased or algorithmic placement of links to our website can be negatively affected. In addition, a search engine could, for competitive or other purposes, alter its search algorithms or results causing our website to be placed lower in organic search query results. If a major search engine changes its algorithms in a manner that negatively affects the search engine ranking of our website or those of our partners, our business, results of operations and financial condition would be harmed. Furthermore, our failure to successfully manage our search engine optimization could result in a substantial decrease in traffic to our website, as well as increased costs if we were to replace free traffic with paid traffic, which may harm our business, results of operations and financial condition.

We also rely on application marketplaces, such as Apple's App Store and Google's Play, to enable downloads of our applications. Such marketplaces have in the past made, and may in the future make, changes that make access to our products more difficult. For example, our applications may receive unfavorable treatment compared to the promotion and placement of competing applications, such as the order in which they appear within marketplaces. Further, Apple and Google App Stores are an important distribution channel. If they choose

to charge commissions on our products and we fail to negotiate compatible terms, it may harm our business, results of operations and financial condition. Similarly, if problems arise in our relationships with providers of application marketplaces, traffic to our site and our user growth could be harmed.

***We face intense competition in the ticketing industry, and we may not be able to maintain or increase our current revenue, which could adversely affect our business, financial condition and results of operations.***

Our business faces significant competition from other national, regional and local primary and secondary ticketing service providers to secure new and retain existing sellers, buyers and distribution partners on a continuous basis. We also face competition in the resale of tickets from other resale marketplaces and other ticket resellers. The advent of new technology, particularly as it relates to online ticketing, has amplified this competition. The intense competition that we face in the ticketing industry could cause the volume of our ticketing business to decline, and we may not be able to maintain or increase our current revenue due to such decline, which could adversely affect our business, financial condition and results of operations.

Other variables related to the competitive environment that could adversely affect our financial performance by, among other things, leading to decreases in overall revenue, event attendance, ticket prices and fees or profit margins include:

- competitors' offerings that may include more favorable terms or pricing;
- technological changes and innovations that we are unable to adopt or are late in adopting that offer more attractive alternatives than we currently offer, which may lead to a loss of ticket sales or lower ticket fees;
- other entertainment options or ticket inventory selection and variety that we do not offer; and
- increased pricing in the primary ticket marketplace, which could result in reduced profits for secondary ticket sellers and reduced demand for our services.

***Our business is dependent on the willingness of artists, teams and promoters to continue to support the secondary ticket market and any decrease in such support may result in decreased demand for our services.***

Our business is dependent on the secondary ticket market for events put on by artists, teams and promoters. We rely upon the willingness of such artists, teams and promoters to support the secondary ticket market and any decrease in support of the resale market, such as by enacting restrictions regarding resale policies or partnering with other resale marketplaces on an exclusive basis, could result in reduced demand for our services, which would adversely affect our business, financial condition and results of operations.

***If we do not continue to maintain and improve our platform or develop successful new solutions and enhancements or improve existing ones, our business will suffer.***

Our ability to attract and retain sellers, buyers and distribution partners depends in large part on our ability to provide a user-friendly and effective platform, develop and improve our platform and introduce compelling new solutions and enhancements. Our industry is characterized by rapidly changing technology, new service and product introductions and changing demands of sellers, buyers and distribution partners. We spend substantial time and resources understanding such parties' needs and responding to them. Building new solutions is costly and complex, and the timetable for commercial release is difficult to predict and may vary from our historical experience. In addition, after development, sellers, buyers and distribution partners may not be satisfied with our enhancements or perceive that the enhancements do not adequately meet their needs. The success of a new solution or enhancement to our platform can depend on several factors, including timely completion and delivery, competitive pricing, adequate quality testing, integration with our platform, user awareness and overall market acceptance and adoption. If we do not continue to maintain and improve our platform or develop successful new solutions and enhancements or improve existing ones, our business, results of operations and financial condition could be harmed.

***The reputation and brand of our marketplace is important to our success, and if we are not able to maintain and enhance our brand, our business, financial condition and results of operation may be adversely affected.***

We believe that maintaining and enhancing our reputation and brand as a differentiated ticketing marketplace serving sellers, buyers and distribution partners is critical retaining our relationship with our existing sellers, buyers and distribution partners and to our ability to attract new sellers, buyers and distribution partners. The successful promotion of our brand attributes will depend on a number of factors that we control and some factors outside of our control.

The promotion of our brand requires us to make substantial expenditures and management investment, which will increase as our market becomes more competitive and as we seek to expand our marketplace. To the extent these activities yield increased revenue, this revenue may not offset the increased expenses we incur. If we do not successfully maintain and enhance our brand and successfully differentiate our marketplace from competitive products and services, our business may not grow, we may not be able to compete effectively and we could lose sellers, buyers or distribution partners or fail to attract potential new sellers, buyers and distribution partners, all of which would adversely affect our business, results of operations and financial condition.

There are also factors outside of our control, which could undermine our reputation and harm our brand. Negative perception of our marketplace may harm our business, including as a result of complaints or negative publicity about us; the promotion on our platform of events that are deemed to be COVID-19 “superspreader” events by the media; our inability to timely comply with local laws, regulations and/or consumer protection related guidance; the use of our platform to sell fraudulent tickets; responsiveness to issues or complaints and timing of refunds and/or reversal of payments on our platform; actual or perceived disruptions or defects in our platform; security incidents; or lack of awareness of our policies or changes to our policies that sellers, buyers or others perceive as overly restrictive, unclear or inconsistent with our values.

If we are unable to maintain a reputable platform that provides valuable solutions and desirable events, then our ability to attract and retain sellers, buyers and distribution partners could be impaired and our reputation, brand and business could be harmed.

***Our success depends, in significant part, on concert, sporting and theater events and economic and other factors adversely affecting such events could have a material adverse effect on our business, financial condition and results of operations.***

A decline in attendance at, or reduction in the number of, live concert, sporting and theater events may have an adverse effect on our revenue and operating income. In addition, during periods of economic slowdown and recession, many consumers have historically reduced their discretionary spending and advertisers have reduced their advertising expenditures. The impact of economic slowdowns, including the current economic environment due to COVID-19, on our business is difficult to predict, but may result in reductions in ticket sales and our ability to generate revenue. The risks associated with our business may become more acute in periods of a slowing economy or recession, which may be accompanied by a decrease in attendance at live concert, sporting and theater events. Many of the factors affecting the number and availability of live concert, sporting and theater events are beyond our control. For instance, certain sports leagues have experienced labor disputes leading to threatened or actual player lockouts. Any such lockouts that result in shortened or canceled seasons could adversely impact our business both due to the loss of games and ticketing opportunities as well as the possibility of decreased attendance following such a lockout due to adverse fan reaction.

Our business depends on discretionary consumer and corporate spending. Many factors related to corporate spending and discretionary consumer spending, including economic conditions affecting disposable consumer income such as unemployment levels, fuel prices, interest rates, changes in tax rates and tax laws that impact companies or individuals, and inflation can significantly impact our operating results. Business conditions, as well as various industry conditions, including corporate spending, can also significantly impact our operating results as these factors can affect premium seat sales. Negative factors such as challenging economic conditions



and public concerns over terrorism and security incidents, particularly when combined, can also impact corporate and consumer spending. In addition, the impact of the economic downturn resulting from the COVID-19 pandemic, including a reduction in discretionary spending and confidence for consumers has resulted in a decline in ticket sales and attendance, which has impacted our operating results and growth. There can be no assurance that consumer and corporate spending will not continue to be adversely impacted by current economic conditions, or by any future deterioration in economic conditions, which could have a material adverse effect on our business, financial condition and results of operations.

***We may be adversely affected by the occurrence of extraordinary events, such as terrorist attacks, disease epidemics or pandemics, severe weather events and natural disasters.***

The occurrence and threat of extraordinary events, such as terrorist attacks, intentional or unintentional mass-casualty incidents, public health concerns such as contagious disease epidemics or pandemics, natural disasters or similar severe weather events, may deter artists from touring, teams from holding games and/or substantially decrease the use of and demand for our services, which may decrease our revenue or expose us to substantial liability. Terrorism and security incidents in the past, military actions in foreign locations, periodic elevated terrorism alerts and fears from publicized contagious disease epidemics and pandemics have raised numerous challenging operating factors, including public concerns regarding air travel, military actions and additional national or local catastrophic incidents, causing a nationwide disruption of commercial and leisure activities. In the event of actual or threatened terrorism events, some artists may refuse to travel or book tours, which could adversely affect our business. Attendance at events may decline due to fears over terrorism, which could adversely impact our operating results.

Additionally, our business may be adversely affected by disease epidemics or pandemics, severe weather events and natural disasters. The occurrence of these events may deter buyers from attending and purchasing tickets to live concerts, sporting or theater events, which could negatively impact our business and financial performance. Moreover, performers, venues, teams or promoters may decide to cancel concert, sporting and theater events due to social distancing requirements, such as those imposed in response to the COVID-19 pandemic, or due to severe weather events or natural disasters. Cancellations of such events can adversely affect our financial performance, as we are obligated to issue refunds or credits for tickets purchased for those events that are not rescheduled.

***We may enter into future acquisitions and take certain actions in connection with such transactions, including actions taken to comply with antitrust, competition and other regulations, that could affect our business and results of operations; if we are unsuccessful in our future acquisition endeavors, our business could be adversely impacted.***

Our future growth rate depends in part on our selective acquisition of additional businesses. A portion of our growth has been attributable to acquisitions, such as the acquisition of Fanxchange Limited in 2019. We may be unable to identify other suitable targets for further acquisition or make further acquisitions at favorable prices. If we identify a suitable acquisition candidate, our ability to successfully complete the acquisition would depend on a variety of factors, and may include our ability to obtain financing on acceptable terms and requisite government approvals. In addition, our Term Loan Facilities restrict our ability to make certain acquisitions. In connection with future acquisitions, we could take certain actions that could adversely affect our business, including:

- using a significant portion of our available cash;
- issuing equity securities, which would dilute current stockholders' percentage ownership;
- incurring substantial debt;
- incurring or assuming contingent liabilities, known or unknown;
- incurring amortization expenses related to intangibles; and
- incurring large accounting write-offs or impairments.

In addition, acquisitions involve inherent risks which, if realized, could adversely affect our business and results of operations, including those associated with:

- integrating the operations, financial reporting, technologies and personnel of acquired companies, including establishing and maintaining a system of internal controls appropriate for a public company environment;
- managing geographically dispersed operations;
- the diversion of management's attention from other business concerns;
- the inherent risks in entering markets or lines of business in which we have either limited or no direct experience;
- the potential loss of key employees, customers and strategic partners of acquired companies; and
- the impact of laws and regulations relating to antitrust at the state, federal and international levels, which could significantly affect our ability to complete acquisitions and expand our business.

***Our operations are seasonal and our results of operations vary from quarter to quarter and year over year, so our financial performance in certain financial quarters or years may not be indicative of, or comparable to, our financial performance in subsequent financial quarters or years.***

We believe our financial results and cash needs will vary greatly from quarter to quarter and year to year depending on, among other things, the timing of tours, tour cancellations, event ticket sales, seasonal and other fluctuations in our operating results, the timing of guaranteed payments, financing activities, acquisitions and investments and receivables management. Because our results may vary significantly from quarter to quarter and year to year, our financial results for one quarter or year cannot necessarily be compared to another quarter or year and may not be indicative of our future financial performance in subsequent quarters or years. Typically, we experience our lowest financial performance in the first and second quarters of the calendar year due to the timing of large-scale events and concert onsales. In addition, the timing of tours of top grossing acts can impact comparability of quarterly results year over year and potentially annual results. Similarly, the number of games in playoff series and the teams involved can vary year over year and impact our results. The seasonality of our business could create cash flow management risks if we do not adequately anticipate and plan for periods of decreased activity, which could negatively impact our ability to execute on our strategy, which in turn could harm our results of operations. Due to the unprecedented stoppage of concert, sporting and theater events globally in mid-March of 2020 due to the global COVID-19 pandemic, we did not experience our typical seasonality trends in 2020.

***We rely on the experience and expertise of our senior management team, key technical employees and other highly skilled personnel and the failure to retain, motivate or integrate any of these individuals could have an adverse effect on our business, financial condition or results of operations.***

Our success depends upon the continued service of our senior management team and key technical employees, as well as our ability to continue to attract and retain additional highly qualified personnel. Our future success depends on our continuing ability to identify, hire, develop, motivate, retain and integrate highly skilled personnel for all areas of our organization. Each of our executive officers, key technical personnel and other employees could terminate his or her relationship with us at any time. The loss of any member of our senior management team or key personnel might significantly delay or prevent the achievement of our business objectives and could harm our business and our relationships. Competition in our industry for qualified employees is intense. In addition, our compensation arrangements, such as our equity award programs, may not always be successful in attracting new employees and retaining and motivating our existing employees.

We face significant competition for personnel, particularly in Chicago, Illinois and Toronto, Ontario. To attract top talent, we have had to offer, and believe we will need to continue to offer, competitive compensation and benefits packages. We may also need to increase our employee compensation levels in response to

competition. In 2020, as a result of the COVID-19 pandemic, we reduced our workforce by approximately 50%. This workforce reduction may hurt our employment brand and may make it more difficult to hire employees in the future. Further, as the economy recovers from the COVID-19 pandemic, we may not be able to hire new employees quickly enough to meet our needs. If we fail to effectively manage our hiring needs or successfully integrate new hires, our efficiency, ability to meet forecasts and our employee morale, productivity and retention could suffer, which may harm our business.

***Impairment of our goodwill could negatively impact our financial results and financial condition.***

In accordance with GAAP, we test goodwill and indefinite-lived intangible assets for impairment annually, or more frequently if events or changes in circumstances indicate that the assets might be impaired. If the carrying amount of our goodwill exceeds its implied fair value, an impairment loss equal to the excess is recorded. During the year ended December 31, 2020, we recognized a total non-cash impairment charge of \$573.8 million, including an impairment of goodwill of \$377.1 million. As of March 31, 2021, we had goodwill of approximately \$683.3 million, which constituted approximately 57% of our total assets at that date. Due to the volatile stock market, the current economic uncertainty and other factors, we cannot provide assurance that remaining goodwill will not be further impaired in future periods. Impairment may result from, among other things, a significant decline in our expected cash flows, an adverse change in the business climate and slower growth rates in our industry. If we are required to record an impairment charge for goodwill in the future, this would adversely impact our financial condition and financial results.

**Risks Relating to Government Regulation and Litigation**

***The processing, storage, use and disclosure of personal data could give rise to liabilities as a result of governmental regulation, conflicting legal requirements or differing applications of privacy regulations.***

We receive, transmit and store a large volume of personal data and other user data. Numerous federal, state and international laws address privacy, data protection and the collection, storing, sharing, use, disclosure and protection of personal data and other user data. In the United States, numerous states already have, and are looking to expand, data protection legislation requiring companies like ours to consider solutions to meet differing needs and expectations of buyers and sellers. For example, California enacted the California Consumer Privacy Act (“CCPA”), which took effect on January 1, 2020. The CCPA establishes a new privacy framework for covered businesses such as ours, and may require us to modify our data processing practices and policies and incur compliance related costs and expenses. The CCPA provides new and enhanced data privacy rights to California residents, including the right to access and delete their personal information, and receive detailed information about how their personal information is used and shared. The CCPA also created restrictions on “sales” of personal information that allow California residents to opt-out of certain sharing of their personal information and prohibits covered businesses from discriminating against consumers (e.g., charging more for services) for exercising any of their CCPA rights. The CCPA provides for potentially severe statutory penalties, and a private right of action for data breaches resulting from a failure to implement reasonable security procedures and practices. In addition, in November 2020, California voters approved the California Privacy Rights Act (“CPRA”) ballot initiative which introduced significant amendments to the CCPA and established and funded a dedicated California privacy regulator, the California Privacy Protection Agency (“CPPA”). The amendments introduced by the CPRA go into effect on January 1, 2023, and new implementing regulations are expected to be introduced by the CPPA. Some observers have noted that the CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States, which could increase our potential liability and adversely affect our business. Further, on March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act (“CDPA”), a comprehensive privacy statute that shares similarities with the CCPA, CPRA, and legislation proposed in other states. Similar laws have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the United States. The enactment of such laws could have potentially conflicting requirements that would make compliance challenging.

Outside the United States, personal data and other user data is increasingly subject to legislation and regulations in numerous jurisdictions around the world, the intent of which is to protect the privacy of information that is collected, processed and transmitted in or from the governing jurisdiction. Foreign data protection, privacy, information security, user protection and other laws and regulations are often more restrictive than those in the United States. In particular, the United Kingdom, the European Union and the European Economic Area (EEA) and their member states traditionally have taken broader views as to types of data that are subject to privacy and data protection laws and regulations, and have imposed greater legal obligations on companies in this regard. For example, the European Union General Data Protection Regulation (GDPR) became effective May 25, 2018. The GDPR applies to any company established in the EEA as well as to those outside the EEA if they collect and use personal data in connection with the offering of goods or services to individuals in the EEA or the monitoring of their behavior. Although we do not currently trigger the application of the GDPR, if we materially alter our operations such that we become established in the EU/UK (e.g. by employing individuals in those locations), begin monitoring individuals in the EU/UK or demonstrate an intention to offer goods and services to individuals in the EU/UK, we will be required to comply with the GDPR and applicable UK data privacy laws. The GDPR and UK data privacy laws enhances data protection obligations for processors and controllers of personal data, including, for example, expanded disclosures about how personal information is to be used, limitations on retention of information, mandatory data breach notification requirements and onerous new obligations on services providers. If we are required to comply with the GDPR or UK data privacy laws, this may significantly increase our operational costs and our overall risk exposure.

We are also subject to the Payment Card Industry (“PCI”) Data Security Standard, which is a standard designed to protect credit card account data as mandated by payment card industry entities. We rely on vendors to handle PCI matters and to ensure PCI compliance. Despite our compliance efforts, we may become subject to claims that we have violated the PCI Data Security Standard based on past, present, and future business practices. Our actual or perceived failure to comply with the PCI Data Security Standard can subject us to fines, termination of banking relationships, and increased transaction fees.

The interpretation and application of many privacy and data protection laws are, and will likely remain, uncertain, and it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our existing data management practices or product features. If so, in addition to the possibility of fines, lawsuits and other claims and penalties, we could be required to fundamentally change our business activities and practices or modify our products, which could harm our business. In addition to government regulation, privacy advocacy and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. Any inability to adequately address privacy, data protection and data security concerns or comply with applicable privacy, data protection or data security laws, regulations, policies and other obligations could result in additional cost and liability to us, damage our reputation, inhibit sales and harm our business.

Our failure, and/or the failure by the various third-party service providers and partners with which we do business, to comply with applicable privacy policies or federal, state or similar international laws and regulations or any other obligations relating to privacy, data protection or information security, or any compromise of security that results in the unauthorized release of personal data or other user data, or the perception that any such failure or compromise has occurred, could negatively harm our brand and reputation, result in a loss of sellers, buyers or distribution partners, discourage potential sellers or buyers from trying our platform and/or result in fines and/or proceedings by governmental agencies and/or users, any of which could have a material adverse effect on our business, results of operations and financial condition.

***Unfavorable outcomes in legal proceedings in which we may be involved may adversely affect our business and operating results.***

Our results may be affected by the outcome of pending and future litigation. Unfavorable rulings in our legal proceedings may have a negative impact on us that may be greater or smaller depending on the nature of the rulings. In addition, we are currently, and from time to time in the future may be, subject to various other claims, investigations, legal and administrative cases and proceedings (whether civil or criminal) or lawsuits by governmental agencies or private parties. If the results of these investigations, proceedings or suits are unfavorable to us or if we are unable to successfully defend against third-party lawsuits, we may be required to pay monetary damages or may be subject to fines, penalties, injunctions or other censure that could have a material adverse effect on our business, financial condition and results of operations. Even if we adequately address the issues raised by an investigation or proceeding or successfully defend a third-party lawsuit or counterclaim, we may have to devote significant financial and management resources to address these issues, which could harm our business, financial condition and results of operations.

***Unfavorable legislative outcomes may adversely affect our industry, our business and our operating results.***

In addition to concerns related to network and data security, the collection, transfer, use, disclosure, security and retention of personal or sensitive information and other user data are governed by existing and evolving federal, state and international laws, as described above. We have expended significant capital and other resources to keep abreast of the evolving privacy landscape. However, due to the changes in the data privacy regulatory environment, we may incur additional costs and challenges to our business that restrict or limit our ability to collect, transfer, use, disclose, secure, or retain personal or sensitive information. These changes in data privacy laws may require us to modify our current or future products, services, programs, practices or policies, which may in turn impact the products and services available to our customers.

Additionally, some states regulate the secondary ticket market, such as by setting maximum resale prices, and any further regulation or unfavorable legislative outcomes imposing additional restrictions on ticket resales may adversely affect our industry, our business and our operating results.

**Risks Relating to Information Technology, Cybersecurity and Intellectual Property**

***The success of our operations depends, in part, on the integrity of our systems and infrastructure, as well as affiliate and third-party computer systems, computer networks and other communication systems. System interruption and the lack of integration and redundancy in these systems and infrastructure may have an adverse impact on our business, financial condition and results of operations.***

System interruption and the lack of integration and redundancy in the information systems and infrastructure, both of our own ticketing systems and other computer systems and of affiliate and third-party software, computer networks and other communications systems service providers on which we rely, may adversely affect our ability to operate websites, process and fulfill transactions, respond to customer inquiries and generally maintain cost-efficient operations. Similarly, due to our reliance on a network of technology systems, many of which are outside of our control, changes to interfaces upon which we rely or a reluctance of our counterparties to continue supporting our systems could lead to technology interruptions. Such interruptions could occur by virtue of natural disaster, malicious actions such as hacking or acts of terrorism or war, or human error. In addition, the loss of some or all of certain key personnel could require us to expend additional resources to continue to maintain our software and systems and could subject us to systems interruptions. The large infrastructure plant that is required to operate our systems requires an ongoing investment of time, money and effort to maintain or refresh hardware and software and to ensure it remains at a level capable of servicing the demand and volume of business that we receive. Failure to do so may result in system instability, degradation in performance, or unfixable security vulnerabilities that could adversely impact both the business and the consumers utilizing our services.

While we have backup systems for certain aspects of our operations, disaster recovery planning by its nature cannot be sufficient for all eventualities. In addition, we may not have adequate insurance coverage to compensate for losses from a major interruption. If any of these adverse events were to occur, it could adversely affect our business, financial condition and results of operations.

***Cyber security risks, data loss or other breaches of our network security could materially harm our business and results of operations, and the processing, storage, use and disclosure of personal or sensitive information could give rise to liabilities and additional costs as a result of governmental regulation, litigation and conflicting legal requirements relating to personal privacy rights.***

Due to the nature of our business, we process, store, use, transfer and disclose certain personal or sensitive information about our customers and employees. Penetration of our network or other misappropriation or misuse of personal or sensitive information and data, including credit card information and other personally identifiable information, could cause interruptions in our operations and subject us to increased costs, litigation, inquiries and actions from governmental authorities, and financial or other liabilities. In addition, security breaches, incidents or the inability to protect information could lead to increased incidents of ticketing fraud and counterfeit tickets. Security breaches and incidents could also significantly damage our reputation with sellers, buyers, distribution partners and other third parties, and could result in significant costs related to remediation efforts, such as credit or identity theft monitoring. Such incidents may occur in the future, resulting in unauthorized, unlawful, or inappropriate access to, inability to access, disclosure of, or loss of the sensitive, proprietary and confidential information that we handle.

Although we have developed systems and processes that are designed to protect customer and employee information and to prevent security breaches or incidents (which could result in data loss or other harm or loss), such measures cannot provide absolute security or certainty. It is possible that advances in computer and hacker capabilities, new variants of malware, the development of new penetration methods and tools, inadvertent violations of company policies or procedures or other developments could result in a compromise of customer or employee information or a breach of the technology and security processes that are used to protect customer and employee information. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems may change frequently and as a result, may be difficult for our business to detect for long periods of time. In addition, despite our best efforts, we may be unaware of or unable to anticipate these techniques or implement adequate preventative measures. We have expended significant capital and other resources to protect against and remedy such potential security breaches, incidents and their consequences and will continue to do so in the future.

We also face risks associated with security breaches and incidents affecting third parties with which we are affiliated or with which we otherwise conduct business. In particular, hardware, software or applications we develop or procure from third parties may contain defects in design or manufacture and/or may pose a security risk that could unexpectedly compromise information security. Sellers, buyers and distribution partners are generally concerned with the security and privacy of the internet, and any publicized security problems affecting our businesses and/or third parties may discourage sellers, buyers or distribution partners from doing business with us, which could have an adverse effect on our business, financial condition and results of operations.

Laws in all states and U.S. territories require businesses to notify affected individuals, governmental entities, and/or credit reporting agencies of certain security incidents affecting personal information. Such laws are inconsistent, and compliance in the event of a widespread security incident is complex and costly and may be difficult to implement. Our existing general liability and cyber liability insurance policies may not cover, or may cover only a portion of, any potential claims related to security breaches to which we are exposed or may not be adequate to indemnify us for all or any portion of liabilities that may be imposed. We also cannot be certain that our existing insurance coverage will continue to be available on acceptable terms or in amounts sufficient to cover the potentially significant losses that may result from a security incident or breach or that the insurer will not deny coverage of any future claim.

***If we fail to adequately protect or enforce our intellectual property rights, our competitive position and our business could be materially adversely affected.***

We believe that our proprietary technologies and information, including our software, informational databases, and other components that make our products and services are critical to our success, and we seek to protect our technologies, products and services through a combination of intellectual property rights, including trademarks, domain names, copyrights and trade secrets, as well as through contractual restrictions with employees, customers, suppliers, affiliates and others. Despite our efforts, it may be possible for a third party to copy or otherwise obtain and use our intellectual property without authorization which, if discovered, might require legal action to correct. In addition, third parties may independently and lawfully develop products or services substantially similar to ours. We do not currently hold patents over our technology. We seek to protect our trade secrets and proprietary know-how and technology methods through confidentiality agreements and other access control measures. Failure of such strategies to protect our technology or our inability to protect patents in the future to the extent we obtain them could have a materially adverse impact on our business, financial condition and results of operations.

We have been granted trademark registrations with the United States Patent and Trademark Office and/or various foreign authorities for certain of our brands. Our existing or future trademarks may be adjudicated invalid by a court or may not afford us adequate protection against competitors.

We cannot be certain that the measures we implement will prevent infringement, misappropriation or other violations of our intellectual property rights, particularly in foreign countries where the laws may not protect our proprietary rights as fully as they do in the United States. Our failure to protect our intellectual property rights in a meaningful manner or challenges to our related contractual rights could result in erosion of our brand names or other intellectual property and could adversely affect our business, financial condition and results of operations. Litigation may be necessary in the future to enforce our intellectual property rights, protect our trade secrets or determine the validity and scope of proprietary rights claimed by others. Any litigation of this nature, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could adversely affect our business, financial condition and results of operations.

***We may face potential liability and expense for legal claims alleging that the operation of our business infringes intellectual property rights of third parties, who may assert claims against us for unauthorized use of such rights.***

We cannot be certain that the operation of our business does not, or will not, infringe or otherwise violate the intellectual property rights of third parties. From time to time, we have been and may in the future be, subject to legal proceedings and claims alleging that we infringe or otherwise violate the intellectual property rights of third parties. These claims, whether or not successful, could divert management time and attention away from our business and harm our reputation and financial condition. In addition, the outcome of litigation is uncertain, and third parties asserting claims could secure a judgment awarding substantial damages, as well as injunctive or other equitable relief against us, which could require us to rebrand, redesign, or reengineer our platform, products or services, and/or effectively block our ability to distribute, market or sell our products and services.

***Our payments system depends on third-party providers and is subject to risks that may harm our business.***

We rely on third-party providers to support our payment system, as our buyers primarily use credit cards to purchase tickets on our marketplace. Nearly all our revenue is associated with payments processed through a single provider, which relies on banks and payment card networks to process transactions. If this provider or any of its vendors do not operate well with our platform, our payments systems and our business could be adversely affected. If this provider does not perform adequately, determines certain types of transactions are prohibitive for any reason, if this provider's technology does not interoperate well with our platform, or if our relationships with this provider, the bank or the payment card networks on which it relies were to terminate unexpectedly, buyers may find our platform more difficult to use. Such an outcome could harm the ability of sellers to use our platform, which could cause them to use our platform less and harm our business.

Our payment processing partner requires us to comply with payment card network operating rules, which are set and interpreted by the payment card networks. The payment card networks could adopt new operating rules or interpret or re-interpret existing rules in ways that might prohibit us from providing certain services to some buyers or sellers, be costly to implement or difficult to follow. We are required to reimburse our payment processor for fines assessed by payment card networks if we, or buyers or sellers using our platform, violate these rules, such as our processing of various types of transactions that may be interpreted as a violation of certain payment card network operating rules. Changes to these rules and requirements, or any change in our designation by payment card networks, could require a change in our business operations and could result in limitations on or loss of our ability to accept payment cards, any of which could negatively impact our business.

Additionally, while we deploy sophisticated technology to detect fraudulent purchase activity, we may incur losses if we fail to prevent the use of fraudulent credit card information on transactions in the future. Fraud schemes are becoming increasingly sophisticated and common, and our ability to detect and combat fraudulent schemes may be negatively impacted by the adoption of new payment methods and new technology platforms. If we or this provider fail to identify fraudulent activity or are unable to effectively combat the use of fraudulent credit cards on our platform or if we otherwise experience increased levels of disputed credit card payments, our results of operations and financial positions could be materially adversely affected.

Finally, payment card networks and our payment processing partner could increase the fees they charge us for their services, which would increase our operating costs and reduce our margins. Any such increase in fees could also harm our business, results of operations and financial condition.

### **Risks Relating to Our Indebtedness**

***We anticipate that, upon completion of the business combination, we will continue to be party to debt agreements that could restrict our operations and impair our financial condition. The agreements governing our indebtedness will impose restrictions on us that limit the discretion of management in operating our business and that, in turn, could impair our ability to meet our obligations under our debt.***

The agreements governing our Term Loan Facilities (as defined in “Management’s Discussion and Analysis of Financial Condition and Results of Operations of Vivid Seats”) include restrictive covenants that, among other things, restrict our ability to:

- incur additional debt;
- pay dividends and make distributions;
- make certain investments;
- repurchase our stock and prepay certain indebtedness;
- create liens;
- enter into transactions with affiliates;
- modify the nature of our business;
- transfer and sell assets, including material intellectual property;
- enter into agreements prohibiting our ability to grant liens in favor of our senior secured creditors;
- amend or modify the terms of any junior financing arrangements;
- amend our organizational documents; and
- merge or consolidate.

In addition, our Term Loan Facilities include other restrictions. Our failure to comply with the terms and covenants of our indebtedness could lead to a default under the terms of the governing documents, which would entitle the lenders to accelerate the indebtedness and declare all amounts owed due and payable.



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As of March 31, 2021, our total indebtedness, excluding unamortized debt discounts and debt issuance costs of \$16.0 million, was \$903.4 million. The gross proceeds of gross proceeds from the PIPE Subscription and funds held in the Trust Account are expected to be used to, among other things, repay our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of \$132.1 million under both the no redemption scenario and the maximum redemption scenario. We may also incur significant additional indebtedness in the future.

Our substantial indebtedness could have adverse consequences, including:

- making it more difficult for us to satisfy our obligations;
- increasing our vulnerability to adverse economic, regulatory and industry conditions;
- limiting our ability to obtain additional financing for future working capital, capital expenditures, acquisitions and other purposes;
- requiring us to dedicate a substantial portion of our cash flow from operations to fund payments on our debt, thereby reducing funds available for operations and other purposes;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- making us more vulnerable to increases in interest rates; and
- placing us at a competitive disadvantage compared to our competitors that have less debt.

### ***We depend on the cash flows of our subsidiaries in order to satisfy our obligations.***

We rely on distributions and loans from our subsidiaries to meet our payment requirements under our obligations. If our subsidiaries are unable to pay dividends or otherwise make payments to us, we may not be able to make debt service payments on our obligations. Subject to certain exceptions, each of our subsidiaries guarantees our indebtedness under our Term Loan Facilities. We conduct substantially all of our operations through our subsidiaries. Our operating cash flows and consequently our ability to service our debt is therefore principally dependent upon our subsidiaries' earnings and their distributions of those earnings to us and may also be dependent upon loans or other payments of funds to us by those subsidiaries. In addition, the ability of our subsidiaries to provide funds to us may be subject to restrictions under our Term Loan Facilities and may be subject to the terms of such subsidiaries' future indebtedness, as well as the availability of sufficient surplus funds under applicable law.

### ***We may not be able to generate sufficient cash flows or raise the additional capital necessary to fund our operations or other liquidity needs.***

As of March 31, 2021, we had cash and cash equivalents of \$312.8 million. The remaining cash and cash equivalents balance is available to us to fund our operating, investing and financing activities. In addition, due to the COVID-19 pandemic, which has drastically changed the landscape of the concerts, sporting and theater events industries, we experienced a significant decrease in our revenues as a result of decreased volume in 2020. Our revenues were \$35 million and \$469 million for the years ended December 31, 2020 and 2019, respectively, and the net cash provided by (used in) operating activities was \$(33.9) million and \$76.5 million for the years ended December 31, 2020 and 2019, respectively. Revenues for the three months ended March 31, 2021 were \$24 million and the net cash provided by operating activities was \$30.8 million. There is significant uncertainty regarding the extent and duration of the impact that the COVID-19 pandemic will have on our business, and we could exhaust our available financial resources sooner than we expect.

We may need to raise additional funds, and we may not be able to obtain additional debt or equity financing on favorable terms, if at all. Our ability to obtain financing will depend on a number of factors, including:

- general economic and capital market conditions, including as a result of the COVID-19 pandemic;

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- the availability of credit from banks or other lenders;
- investor confidence in us; and
- our results of operations.

We cannot assure you that our business will generate sufficient cash flow from operations, or that we will be able to obtain financing, in an amount sufficient to fund our operations or other liquidity needs. If we raise additional equity financing, our security holders may experience significant dilution of their ownership interests, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of Vivid Seats PubCo common stock.

If we need additional capital and cannot raise it on acceptable terms, if at all, we may not be able to, among other things:

- develop and enhance our platform and solutions;
- continue to invest in our technology development and marketing organizations;
- hire, train and retain employees;
- respond to competitive pressures or unanticipated working capital requirements; or
- pursue acquisition opportunities.

Our inability to do any of the foregoing could reduce our ability to compete successfully and could have an adverse effect on our business.

### **Risks Related to the Business Combination and Horizon**

***Sponsor has agreed to vote in favor of the business combination and the other proposals described herein to be presented at the extraordinary general meeting of shareholders, regardless of how Horizon's public shareholders vote.***

Sponsor has agreed to, among other things, vote in favor of the Business Combination Proposal and the other proposals described herein to be presented at the extraordinary general meeting of shareholders. As of the date of this proxy statement/prospectus/consent solicitation statement, Sponsor owns approximately 43% of Horizon's ordinary shares. Accordingly, it is more likely that the necessary shareholder approval will be received than would be the case if Sponsor agreed to vote its shares in accordance with the majority of the votes cast by Horizon's public shareholders.

***Neither the Horizon board of directors nor any committee thereof obtained a third-party valuation in determining whether or not to pursue the business combination.***

Neither the Horizon board of directors nor any committee thereof is required to obtain an opinion from an independent investment banking or accounting firm that the price that Horizon is paying for Vivid Seats is fair to Horizon from a financial point of view. Neither the Horizon board of directors nor any committee thereof obtained a third-party valuation in connection with the business combination. In analyzing the business combination, the Horizon board of directors conducted due diligence on Vivid Seats. The Horizon board of directors also consulted with its management and legal counsel, financial advisors and other advisors and considered a number of factors, uncertainties and risks, including, but not limited to, those discussed under "Proposal No. 1 — The Business Combination Proposal — Horizon's Board of Directors' Reasons for the Approval of the Business Combination," and concluded that the business combination was in the best interest of Horizon's shareholders. Accordingly, investors will be relying solely on the judgment of the Horizon board of directors in valuing Vivid Seats, and the Horizon board of directors may not have properly valued such businesses. The lack of a third-party valuation may also lead an increased number of shareholders to vote against the business combination or demand redemption of their shares, which could potentially impact Horizon's ability to consummate the business combination.

***Since Sponsor and Horizon’s directors have interests that are different from, or in addition to (and which may conflict with), the interests of Horizon’s shareholders, a conflict of interest may have existed in determining whether the business combination is appropriate as Horizon’s initial business combination. Such interests include that Sponsor will lose the value of its investment in Horizon IPO Private Placement Warrants and founder shares if a business combination is not completed.***

When you consider the recommendation of Horizon’s board of directors in favor of approval of the Business Combination Proposal and the other proposals included herein, you should keep in mind that Sponsor and Horizon’s directors have interests in such proposals that are different from, or in addition to, those of Horizon shareholders and warrant holders generally. Horizon’s board of directors was aware of and considered these interests, among other matters, in evaluating and negotiating the business combination and transaction agreements and in recommending to Horizon’s shareholders that they vote in favor of the proposals presented at the extraordinary general meeting of shareholders, including the Business Combination Proposal. Horizon shareholders should take these interests into account in deciding whether to approve the Proposals, including the Business Combination Proposal. These interests include, among other things:

- the fact that Sponsor has agreed not to redeem any Class A ordinary shares held by it in connection with a shareholder vote to approve a proposed initial transaction;
- the fact that Sponsor paid an aggregate of \$155 million for 15,500,000 Horizon Class A ordinary shares (after giving effect to forfeitures in connection with the underwriters’ overallotment option being reduced or not exercised) (none of which were transferred to Horizon’s independent directors and none of which were transferred to Horizon’s strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$155 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$25,000 for 13,599,608 Horizon Class B ordinary shares (after giving effect to forfeitures in connection with the underwriters’ overallotment option being reduced or not exercised) (the “Sponsor Shares”) (none of which were transferred to Horizon’s independent directors and none of which were transferred to Horizon’s strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$136 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$9.78 million for the 6,519,791 Horizon IPO Private Placement Warrants currently owned by Sponsor, and such warrants will expire worthless if a transaction is not consummated by August 25, 2022; the warrants held by Sponsor had an aggregate market value of approximately \$11,605,228 based upon the closing price of \$1.78 per warrant on the NYSE on June 28, 2021;
- the fact that Sponsor and Horizon’s other current officers and directors have agreed to waive their rights to liquidating distributions from the Trust Account with respect to any Sponsor Shares held by them if Horizon fails to complete an initial transaction by August 25, 2022;
- the fact that the Registration Rights Agreement will be entered into by Horizon;
- the fact that, at the option of Sponsor, any amounts outstanding under any loan made by Sponsor or any of its affiliates to Horizon in an aggregate amount of up to \$1,500,000 may be converted into warrants to purchase Vivid Seats Class A common stock in connection with the consummation of the business combination;
- the right of Sponsor to hold shares of Vivid Seats Class A common stock, as well as Vivid Seats PubCo Warrants, following the business combination, subject to certain lock-up periods;
- the continued indemnification of Horizon’s existing directors and officers and the continuation of Horizon’s directors’ and officers’ liability insurance after the business combination (i.e., a “tail policy”);

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- the fact that Sponsor and Horizon’s officers and directors will not be reimbursed for any out-of-pocket expenses (estimated at \$0 as of June 28, 2021) if an initial transaction is not consummated by August 25, 2022;
- the fact that if the Trust Account is liquidated, including in the event Horizon is unable to complete an initial transaction by August 25, 2022, Sponsor has agreed to indemnify Horizon to ensure that the proceeds in the Trust Account are not reduced below \$10.00 per public share, or such lesser per public share amount as is in the Trust Account on the liquidation date, by the claims of prospective target businesses with which Horizon has entered into an acquisition agreement or claims of any third party for services rendered or products sold to Horizon, but only if such a vendor or target business has not executed a waiver of any and all rights to seek access to the Trust Account;
- the fact that Horizon may be entitled to distribute or pay over funds held by Horizon outside the Trust Account to Sponsor or any of its affiliates prior to the Closing;
- the fact that Hoya Intermediate shall pay Sponsor \$11.7 million in cash at Closing in consideration for the Sponsor Backstop Commitment;
- that Sponsor can earn a positive return on its investment even if other Horizon shareholders experience a negative return given the potential option value for the new warrants; and
- the fact that Sponsor will enter into the Exchange Agreement, pursuant to which all Horizon Class B ordinary shares will be exchanged for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth in the Exchange Agreement.

The existence of financial and personal interests of one or more of Horizon’s directors may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is in the best interests of Horizon and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining to recommend that shareholders vote for the proposals. See the section entitled “Proposal No.1 — The Business Combination Proposal – Interests of Certain Persons in the Business Combination” for a further discussion of these considerations.

The financial and personal interests of Sponsor and Horizon’s directors may have influenced their motivation in identifying and selecting Vivid Seats as a business combination target, completing an initial business combination with Vivid Seats and influencing the operation of the business following the initial business combination. In considering the recommendations of Horizon’s board of directors to vote for the proposals, its shareholders should consider these interests.

***The exercise of the Horizon board of directors’ discretion in agreeing to changes or waivers in the terms of the Transaction Agreement, including closing conditions, may result in a conflict of interest when determining whether such changes to the terms or waivers of conditions are appropriate and in Horizon’s shareholders’ best interest.***

In the period leading up to the Closing, events may occur that, pursuant to the Transaction Agreement, would require Horizon to agree to amend the Transaction Agreement, to consent to certain actions taken by Vivid Seats or to waive rights that Horizon is entitled to under the Transaction Agreement, including those related to closing conditions. Such events could arise because of changes in the course of Vivid Seats’ businesses or a request by Vivid Seats to undertake actions that would otherwise be prohibited by the terms of the Transaction Agreement or the occurrence of other events that would have a material adverse effect on Vivid Seats’ businesses and would entitle Horizon to terminate the Transaction Agreement. In any of such circumstances, it would be at Horizon’s discretion, acting through its board of directors, to grant its consent or waive those rights. The

existence of financial and personal interests of one or more of the directors described in the preceding risk factors (and described elsewhere in this proxy statement/prospectus/consent solicitation statement) may result in a conflict of interest on the part of such director(s) between what he, she or they may believe is best for Horizon and its shareholders and what he, she or they may believe is best for himself, herself or themselves in determining whether or not to take the requested action. As of the date of this proxy statement/prospectus/consent solicitation statement, Horizon does not believe there will be any changes or waivers that Horizon's board of directors would be likely to make after shareholder approval of the Business Combination Proposal has been obtained. While certain changes could be made without further shareholder approval, Horizon will circulate a new or amended proxy statement/prospectus/consent solicitation statement and resolicit Horizon's shareholders if changes to the terms of the transaction that would have a material impact on its shareholders are required prior to the vote on the Business Combination Proposal.

***The announcement of the proposed business combination could disrupt Vivid Seats' relationships with its clients, counterparties, vendors and other business partners and others, as well as its operating results and business generally.***

Whether or not the business combination and related transactions are ultimately consummated, as a result of uncertainty related to the proposed transactions, risks relating to the impact of the announcement of the business combination on Vivid Seats' business include the following:

- its employees may experience uncertainty about their future roles, which might adversely affect Vivid Seats' ability to retain and hire key personnel and other employees;
- Buyers, sellers, distribution partners and other parties with which Vivid Seats maintains business relationships may experience uncertainty about its future and rescind their deposits, seek alternative relationships with third parties, seek to alter their business relationships with Vivid Seats or fail to extend an existing relationship with Vivid Seats; and
- Vivid Seats has expended and will continue to expend significant costs, fees and expenses for professional services and transaction costs in connection with the proposed business combination.

If any of the aforementioned risks were to materialize, they could lead to significant costs which may impact Vivid Seats' results of operations and cash available to fund its businesses.

***Subsequent to consummation of the business combination, Vivid Seats may be exposed to unknown or contingent liabilities and may be required to subsequently take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on Vivid Seats' financial condition, results of operations and the price of its securities, which could cause you to lose some or all of your investment.***

Horizon cannot assure you that the due diligence conducted in relation to Vivid Seats has identified all material issues or risks associated with Vivid Seats, its business or the industry in which it competes. Furthermore, Horizon cannot assure you that factors outside of Vivid Seats' and Horizon's control will not later arise. As a result of these factors, Vivid Seats may be exposed to liabilities and incur additional costs and expenses and it may be forced to later write down or write off assets, restructure its operations, or incur impairment or other charges that could result in Vivid Seats reporting losses. Even if Horizon's due diligence has identified certain risks, unexpected risks may arise and previously known risks may materialize in a manner not consistent with its preliminary risk analysis. If any of these risks materialize, this could have a material adverse effect on Vivid Seats' financial condition and results of operations and could contribute to negative market perceptions about its securities or Vivid Seats. Additionally, Horizon has no indemnification rights against Hoya Topco and the Vivid Seats Companies under the Transaction Agreement. Accordingly, any shareholders or warrant holders of Horizon who choose to remain Vivid Seats PubCo's stockholders or warrant holders following the business combination could suffer a reduction in the value of their shares or warrants. Such stockholders or warrant holders are unlikely to have a remedy for such reduction in value.

***The historical financial results of Vivid Seats and unaudited pro forma financial information included elsewhere in this proxy statement/prospectus/consent solicitation statement may not be indicative of what Vivid Seats' actual financial position or results of operations would have been if it were a public company.***

The historical financial results of Vivid Seats included in this proxy statement/prospectus/consent solicitation statement do not reflect the financial condition, results of operations or cash flows it would have achieved as a public company during the periods presented or those Vivid Seats PubCo will achieve in the future. Vivid Seats PubCo's financial condition and future results of operations could be materially different from amounts reflected in Vivid Seats' historical financial statements included elsewhere in this proxy statement/prospectus/consent solicitation statement, so it may be difficult for investors to compare Vivid Seats PubCo's future results to historical results or to evaluate its relative performance or trends in its business.

Similarly, the unaudited pro forma financial information in this proxy statement/prospectus/consent solicitation statement is presented for illustrative purposes only and has been prepared based on a number of assumptions including, but not limited to, Vivid Seats PubCo being treated as the "acquired" company for financial reporting purposes in the business combination, the total debt obligations and the cash and cash equivalents of Vivid Seats on the date the business combination closes and the number of Horizon's public shares that are redeemed in connection with the business combination. Accordingly, such pro forma financial information may not be indicative of Vivid Seats PubCo's future operating or financial performance and Vivid Seats PubCo's actual financial condition and results of operations may vary materially from the pro forma results of operations and balance sheet contained elsewhere in this proxy statement/prospectus/consent solicitation statement, including as a result of such assumptions not being accurate. See "Unaudited Pro Forma Condensed Combined Financial Information."

***Financial projections with respect to Vivid Seats may not prove to be reflective of actual financial results.***

In connection with the business combination, Horizon's board of directors considered, among other things, internal financial forecasts prepared by, or at the direction of, the management of Vivid Seats, the key elements of which are set forth in the section entitled "Proposal No. 1 — The Business Combination Proposal — Horizon's Board of Directors' Reasons for the Approval of the Business Combination." Vivid Seats does not, as a matter of general practice, publicly disclose long-term forecasts or internal projections of its future performance, revenue, financial condition or other results. None of these projections or forecasts were prepared with a view towards public disclosure or compliance with the published guidelines of the SEC, GAAP or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial forecasts. These projections and forecasts are inherently based on various estimates and assumptions that are subject to the judgment of those preparing them. These projections and forecasts are also subject to significant economic, competitive, industry and other uncertainties and contingencies, all of which are difficult or impossible to predict and many of which are beyond the control of Vivid Seats. There can be no assurance that Vivid Seats PubCo's financial condition, including its cash flows or results of operations, will be consistent with those set forth in such projections and forecasts, which could have an adverse impact on the market price of Vivid Seats Class A common stock or the business, financial condition and results of operations of Vivid Seats PubCo following the Closing.

***Sponsor, Hoya Topco, Vivid Seats or Horizon's or Vivid Seats' respective directors, officers, advisors or affiliates may elect to purchase shares from public shareholders prior to the consummation of the business combination, which may influence the vote on the business combination and reduce the public "float" of Horizon Class A ordinary shares.***

As of March 31, 2021, Sponsor and Horizon's directors, officers and advisors and certain of their respective affiliates hold approximately 28.7% Horizon Class A ordinary shares and 100% of Horizon Class B ordinary shares. At any time at or prior to the business combination, subject to applicable securities laws, Sponsor, Hoya Topco or Horizon's or Vivid Seats' respective directors, officers, advisors or affiliates may (1) purchase public shares from institutional and other investors who vote, or indicate an intention to vote, against any of the

Proposals, or elect to redeem, or indicate an intention to redeem, public shares, (2) execute agreements to purchase such shares from such investors in the future or (3) enter into transactions with such investors and others to provide them with incentives to acquire public shares, vote their public shares in favor of the Proposals or not redeem their public shares. Such a purchase may include a contractual acknowledgement that such shareholder, although still the record holder of Horizon's shares, is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights. In the event that Sponsor, Hoya Topco or Horizon's or Vivid Seats' respective directors, officers, advisors or affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholder would be required to revoke their prior elections to redeem their shares. The purpose of such share purchases and other transactions would be to (1) increase the likelihood of approving the Proposals and (2) limit the number of public shares electing to redeem, including to satisfy any redemption threshold.

Entering into any such arrangements may have a depressive effect on Horizon Class A ordinary shares (e.g., by giving an investor or holder the ability to effectively purchase shares at a price lower than market, such investor or holder may therefore become more likely to sell the shares he or she owns, either at or prior to the business combination). If such transactions are effected, the consequence could be to cause the business combination to be consummated in circumstances where such consummation could not otherwise occur. Purchases of shares by the persons described above would allow them to exert more influence over the approval of the Proposals and would likely increase the chances that the Proposals would be approved. In addition, if such purchases are made, the public "float" of Horizon's public shares and the number of beneficial holders of Horizon's securities may be reduced, possibly making it difficult to maintain or obtain the quotation, listing or trading of Horizon's securities on a national securities exchange.

***If third parties bring claims against Horizon, the proceeds held in the Trust Account could be reduced and the per share redemption amount received by holders of Horizon Class A ordinary shares may be less than \$10.00 per share.***

Horizon's placing of funds in the Trust Account may not protect those funds from third-party claims against Horizon. Although Horizon seeks to have all vendors, service providers (other than its independent registered public accounting firm), prospective target businesses or other entities with which Horizon does business execute agreements with Horizon waiving any right, title, interest or claim of any kind in or to any monies held in the Trust Account, there is no guarantee that they will execute such agreements or even if they execute such agreements that they would be prevented from bringing claims against the Trust Account, including, but not limited to, fraudulent inducement, breach of fiduciary responsibility or other similar claims, as well as claims challenging the enforceability of the waiver, in each case in order to gain advantage with respect to a claim against Horizon's assets, including the funds held in the Trust Account. If any third party refuses to execute an agreement waiving such claims to the monies held in the Trust Account, Horizon's management will perform an analysis of the alternatives available to it and will enter into an agreement with a third party that has not executed a waiver only if management believes that such third party's engagement would be significantly more beneficial to Horizon than any alternative.

Examples of possible instances where Horizon may engage a third party that refuses to execute a waiver include the engagement of a third-party consultant whose particular expertise or skills are believed by management to be significantly superior to those of other consultants that would agree to execute a waiver or in cases where Horizon is unable to find a service provider willing to execute a waiver. In addition, there is no guarantee that such entities will agree to waive any claims they may have in the future as a result of, or arising out of, any negotiations, contracts or agreements with Horizon and will not seek recourse against the Trust Account for any reason. Upon redemption of the public shares, if Horizon is unable to complete an initial business combination within the prescribed time frame, or upon the exercise of a redemption right in connection with its initial business combination, Horizon will be required to provide for payment of claims of creditors that were not waived that may be brought against Horizon within the 10 years following redemption. Accordingly, the per share redemption amount received by public shareholders could be less than the \$10.00 per share initially held in the Trust Account, due to claims of such creditors.

Sponsor has agreed that it will be liable to Horizon if and to the extent any claims by a third party (other than Horizon's independent registered public accounting firm) for services rendered or products sold to Horizon, or a prospective target business with which Horizon has discussed entering into a transaction agreement, reduce the amount of funds in the Trust Account to below (1) \$10.00 per public share or (2) such lesser amount per public share held in the Trust Account as of the date of the liquidation of the Trust Account due to reductions in the value of the trust assets, in each case net of the interest which may be withdrawn to pay taxes, except as to any claims by a third party who executed a waiver of any and all rights to seek access to the Trust Account and except as to any claims under Horizon's indemnity of the underwriters of the IPO against certain liabilities, including liabilities under the Securities Act. Moreover, in the event that an executed waiver is deemed to be unenforceable against a third party, Sponsor will not be responsible to the extent of any liability for such third-party claims. Horizon has not independently verified whether Sponsor has sufficient funds to satisfy its indemnity obligations and Horizon has not asked Sponsor to reserve for such indemnification obligations. As a result, if any such claims were successfully made against the Trust Account, the funds available for Horizon's initial business combination and redemptions could be reduced to less than \$10.00 per public share. In such event, Horizon may not be able to complete its initial business combination, and you would receive such lesser amount per share in connection with any redemption of your public shares. No member of Horizon's management team will indemnify Horizon for claims by third parties including, without limitation, claims by vendors and prospective target businesses.

***If, after Horizon distributes the proceeds in the Trust Account to Horizon's public shareholders, it files a bankruptcy or winding-up petition or an involuntary bankruptcy or winding-up petition is filed against Horizon that is not dismissed, a bankruptcy or insolvency court may seek to recover such proceeds, and the members of Horizon's board of directors may be viewed as having breached their fiduciary duties to Horizon's creditors, thereby exposing the members of Horizon's board of directors and Horizon to claims of punitive damages.***

If, after Horizon distributes the proceeds in the Trust Account to Horizon's public shareholders, Horizon files a bankruptcy or winding-up petition or an involuntary bankruptcy or winding-up petition is filed against Horizon that is not dismissed, any distributions received by shareholders could be viewed under applicable debtor/creditor and/or bankruptcy and/or insolvency laws as either a "preferential transfer" or a "fraudulent conveyance." As a result, a bankruptcy or insolvency court could seek to recover some or all amounts received by Horizon's shareholders. In addition, Horizon's board of directors may be viewed as having breached its fiduciary duty to Horizon's creditors and/or having acted in bad faith by paying public shareholders from the Trust Account prior to addressing the claims of creditors, thereby exposing itself and Horizon to claims of punitive damages.

***If, before distributing the proceeds in the Trust Account to Horizon's public shareholders, Horizon files a bankruptcy or winding-up petition or an involuntary bankruptcy petition is filed against Horizon that is not dismissed, the claims of creditors in such proceeding may have priority over the claims of Horizon's shareholders and the per-share amount that would otherwise be received by Horizon shareholders in connection with Horizon's liquidation may be reduced.***

If, before distributing the proceeds in the Trust Account to Horizon's public shareholders, Horizon files a bankruptcy or winding-up petition or an involuntary bankruptcy or winding-up petition is filed against Horizon that is not dismissed, the proceeds held in the Trust Account could be subject to applicable bankruptcy or insolvency law, and may be included in Horizon's bankruptcy or insolvency estate and subject to the claims of third parties with priority over the claims of Horizon's shareholders. To the extent any bankruptcy or insolvency claims deplete the Trust Account, the per-share amount that would otherwise be received by Horizon's public shareholders in connection with its liquidation would be reduced.



***Horizon's shareholders may be held liable for claims by third parties against Horizon to the extent of distributions received by them upon redemption of their shares.***

If Horizon is unable to complete the business combination or another business combination within the required time period, Horizon will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem 100% of the outstanding public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest earned on the funds held in the Trust Account and not previously released to Horizon to pay taxes (less up to \$100,000 of interest to pay dissolution expenses), divided by the number of then outstanding Horizon public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any), subject to applicable law, and (iii) as promptly as reasonably possible following such redemption, subject to the approval of Horizon's remaining shareholders and its board of directors, dissolve and liquidate, subject (in each case) to Horizon's obligations under Cayman Islands law to provide for claims of creditors and the requirements of other applicable law. Horizon cannot assure you that it will properly assess all claims that may be potentially brought against Horizon. As a result, Horizon's shareholders could potentially be liable for any claims to the extent of distributions received by them (but no more) and any liability of its shareholders may extend well beyond the third anniversary of the date of distribution. Accordingly, Horizon cannot assure you that third parties will not seek to recover from its shareholders amounts owed to them by Horizon.

***The public shareholders will experience dilution as a consequence of, among other transactions, the issuance of Vivid Seats Class A common stock as consideration in the business combination and the PIPE Subscriptions as well as future issuances pursuant to the 2021 Plan. Having a minority share position may reduce the influence that Horizon's current shareholders have on the management of Vivid Seats PubCo.***

The issuance of a significant number of shares of Vivid Seats Class A common stock in the business combination and in the PIPE Subscription will dilute the equity interest of existing Horizon shareholders in Vivid Seats PubCo and may adversely affect prevailing market prices for its public shares and/or Vivid Seats Public IPO Warrants.

It is anticipated that, upon completion of the business combination and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo's ownership will be as follows: (1) Horizon public shareholders will own approximately 19.9% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of Sponsor, will own approximately 1.8% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a "controlled company" within the meaning of applicable Nasdaq listing rules. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo's shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement. In turn, Vivid Seats PubCo will hold approximately 39.4% of Intermediate Common Units and Hoya Topco will hold approximately 60.6% of the Intermediate Common Units, which interests will be controlled the Private Equity Owner for so long as it

controls Hoya Topco. The PIPE Investors have agreed to purchase in the aggregate 22,500,000 shares of Vivid Seats Class A common stock at \$10.00 per share for an aggregate commitment amount of \$225.0 million in the PIPE Subscription. In this proxy statement/prospectus/consent solicitation statement, we assume that approximately \$769.0 million of the gross proceeds from the PIPE Subscription and funds held in the Trust Account will be used to fund (i) the business combination, the (ii) the partial repayment of our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of approximately \$132.1 million under both the no redemption scenario and maximum redemption scenario, and (iii) the payment of certain transaction expenses. The ownership percentage with respect to Vivid Seats PubCo (a) does not take into account (1) warrants to purchase Vivid Seats Class A common stock that will remain outstanding immediately following the business combination or warrants to purchase Vivid Seats Class B common stock issued in connection with the business combination or (2) the issuance of any shares upon completion of the business combination under the 2021 Plan, but (b) does include founder shares, which will automatically convert into shares of Vivid Seats Class A common stock on a one-for-one basis upon the consummation of the business combination (such shares of Vivid Seats Class A common stock will be subject to transfer restrictions). If the actual facts are different from these assumptions, the above levels of ownership interest will be different.

Future issuances of shares of Vivid Seats Class A common stock, including pursuant to the 2021 Plan, may significantly dilute the equity interests of existing holders of Horizon's securities and may adversely affect prevailing market prices for Vivid Seats PubCo's securities.

***The listing of Vivid Seats PubCo securities on Nasdaq will not benefit from the process undertaken in connection with an underwritten initial public offering.***

Vivid Seats PubCo will apply to list Vivid Seats Class A common stock and Vivid Seats PubCo Warrants on Nasdaq under the symbols "SEAT" and "SEAT WS" to be effective at the time of the Closing. Unlike an underwritten initial public offering of the Vivid Seats PubCo securities, the initial listing of Vivid Seats PubCo's securities as a result of the business combination will not benefit from the following:

- the book-building process undertaken by underwriters that helps to inform efficient price discovery with respect to opening trades of newly listed securities;
- underwriter support to help stabilize, maintain or affect the public price of the new issue immediately after listing; and
- underwriter due diligence review of the offering and potential liability for material misstatements or omissions of fact in a prospectus used in connection with the securities being offered or for statements made by its securities analysts or other personnel.

The lack of such a process in connection with our listing could result in diminished investor demand, inefficiencies in pricing and a more volatile public price for the securities during the period immediately following the listing.

***The Merger may result in adverse tax consequences for holders of public shares.***

U.S. Holders (as defined in "U.S. Federal Income Tax Considerations — U.S. Holders") may be subject to U.S. federal income tax as a result of the Merger. Because the Merger will occur prior to the redemption of public shares, U.S. Holders exercising redemption rights will be subject to the potential tax consequences of the Merger. Additionally, non-U.S. Holders (as defined in "U.S. Federal Income Tax Considerations — Non-U.S. Holders" below) may become subject to withholding tax on any dividends paid or deemed paid on shares of Vivid Seats Class A common stock after the Merger.

As discussed more fully under “U.S. Federal Income Tax Considerations,” the Merger should constitute a tax-deferred reorganization within the meaning of Section 368(a)(1)(F) of the Code. However, due to the absence of direct guidance on the application of Section 368(a)(1)(F) of the Code to the facts and circumstances relating to Horizon, this result is not entirely clear. Accordingly, due to the absence of such guidance, it is not possible to predict whether the IRS or a court considering the issue would take a contrary position. If the Merger fails to qualify as a reorganization under Section 368(a)(1)(F) of the Code, subject to the PFIC rules described in further detail below, a U.S. Holder generally would recognize gain or loss with respect to its public shares or Horizon IPO Public Warrants in an amount equal to the difference, if any, between the fair market value of the corresponding Vivid Seats Class A common stock or Vivid Seats PubCo warrants received in the Merger and the U.S. Holder’s adjusted tax basis in its public shares and Horizon IPO Public Warrants surrendered in exchange therefor.

In the case of a transaction, such as the Merger, that should qualify as a tax-deferred reorganization within the meaning of Section 368(a)(1)(F) of the Code, U.S. Holders will be subject to Section 367(b) of the Code and, as a result: a U.S. Holder that on the day of the Merger beneficially owns (actually and constructively) public shares with a fair market value of less than \$50,000 on the date of the Merger generally will not recognize any gain or loss and will not be required to include any part of Horizon’s earnings in income in respect of the Merger; a U.S. Holder that on the day of the Merger beneficially owns (actually and constructively) public shares with a fair market value of \$50,000 or more, but less than 10% of the total combined voting power of all classes of Horizon’s stock entitled to vote and less than 10% or more of the total value of all classes of Horizon’s stock, generally will recognize gain (but not loss) in respect of the Merger as if such U.S. Holder exchanged its public shares in a taxable transaction, unless such U.S. Holder elects in accordance with applicable Treasury Regulations to include in income as a deemed dividend the “all earnings and profits amount” (as defined in the Treasury Regulations under Section 367(b) of the Code) attributable to the public shares held directly by such U.S. Holder; and a U.S. Holder that on the day of the Merger beneficially owns (actually or constructively) 10% or more of the total combined voting power of all classes of Horizon’s stock entitled to vote or 10% or more of the total value of all classes of Horizon’s stock, will generally be required to include in income as a deemed dividend the “all earnings and profits amount” attributable to the public shares held directly by such U.S. Holder; however, any such U.S. Holder that is a corporation may, under certain circumstances, effectively be exempt from taxation on a portion or all of the deemed dividend pursuant to Section 245A of the Code (commonly referred to as the participation exemption).

Notwithstanding the foregoing, if Horizon qualifies as a PFIC, a U.S. Holder of public shares or Horizon IPO Public Warrants may, in certain circumstances, still recognize gain (but not loss) upon the exchange of its public shares or Horizon IPO Public Warrants pursuant to the Merger under PFIC rules of the Code equal to the excess, if any, of the fair market value of the Vivid Seats Class A common stock or Vivid Seats PubCo warrants received in the Merger over the U.S. Holder’s adjusted tax basis in the corresponding public shares or Horizon IPO Public Warrants surrendered in exchange therefor. The tax on any such gain so recognized would be imposed at the rate applicable to ordinary income and an interest charge would apply. For a more complete discussion of the potential application of the PFIC rules to U.S. Holders as a result of the Merger, see the discussion in the section entitled “U.S. Federal Income Tax Considerations — U.S. Holders — PFIC Considerations.”

**All holders are urged to consult their tax advisors for the tax consequences of the Merger to their particular situation. For a more detailed description of the U.S. federal income tax consequences associated with the Merger, see “U.S. Federal Income Tax Considerations.”**

## Risks Related to the Redemption

***Public shareholders who wish to redeem their public shares for a pro rata portion of the Trust Account must comply with specific requirements for redemption that may make it more difficult for them to exercise their redemption rights prior to the deadline. If shareholders fail to comply with the redemption requirements specified in this proxy statement/prospectus/consent solicitation statement, they will not be entitled to redeem their public shares for a pro rata portion of the funds held in the Trust Account.***

A public shareholder will be entitled to receive cash for any public shares to be redeemed only if such public shareholder: (1)(a) holds public shares or (b) if the public shareholder holds public shares through units, the public shareholder elects to separate its units into the underlying public shares and warrants prior to exercising its redemption rights with respect to the public shares; (2) prior to 5:00 p.m. Eastern Time on \_\_\_\_\_, 2021 (two business days before the scheduled date of the extraordinary general meeting) submits a written request to Continental Stock Transfer & Trust Company, Horizon's transfer agent, that Horizon redeems all or a portion of its public shares for cash, affirmatively certifying in its request if it "IS" or "IS NOT" acting in concert or as a "group" (as defined in Section 13d-3 of the Exchange Act) with any other shareholder with respect to Horizon's ordinary shares; and (3) tenders its public shares to Horizon's transfer agent physically or electronically through DTC. In order to obtain a physical share certificate, a shareholder's broker or clearing broker, DTC and Horizon's transfer agent will need to act to facilitate this request. It is Horizon's understanding that shareholders should generally allot at least two weeks to obtain physical certificates from Horizon's transfer agent. However, because Horizon does not have any control over this process or over DTC, it may take significantly longer than two weeks to obtain a physical share certificate. If it takes longer than anticipated to obtain a physical certificate, public shareholders who wish to redeem their public shares may be unable to obtain physical certificates by the deadline for exercising their redemption rights and thus will be unable to redeem their shares.

If the business combination is consummated, and if a public shareholder properly exercises its right to redeem all or a portion of the public shares that it holds, including timely tendering its shares to Horizon's transfer agent, Horizon will redeem such public shares for a per-share price, payable in cash calculated as of two business days prior to the consummation of the business combination, including interest (net of taxes payable). Please see the section entitled "Extraordinary General Meeting of Horizon Shareholders — Redemption Rights" for additional information on how to exercise your redemption rights.

***If a public shareholder fails to receive notice of Horizon's offer to redeem public shares in connection with the business combination, or fails to comply with the procedures for tendering its shares, such shares may not be redeemed.***

If, despite Horizon's compliance with the proxy rules, a public shareholder fails to receive Horizon's proxy materials, such public shareholder may not become aware of the opportunity to redeem his, her or its public shares. In addition, the proxy materials that Horizon is furnishing to holders of public shares in connection with the business combination describe the various procedures that must be complied with in order to validly redeem the public shares. In the event that a public shareholder fails to comply with these procedures, its public shares may not be redeemed. Please see the section entitled "Extraordinary General Meeting of Horizon Shareholders — Redemption Rights" for additional information on how to exercise your redemption rights.

***If you or a "group" of shareholders of which you are a part are deemed to hold an aggregate of more than 15% of the public shares, you (or, if a member of such a group, all of the members of such group in the aggregate) will lose the ability to redeem all such shares in excess of 15% of the public shares.***

A public shareholder, together with any of his, her or its affiliates or any other person with whom it is acting in concert or as a "group" (as defined under Section 13 of the Exchange Act), will be restricted from redeeming in the aggregate his, her or its shares or, if part of such a group, the group's shares, in excess of 15% of the public shares. In order to determine whether a shareholder is acting in concert or as a group with another shareholder, Horizon will require each public shareholder seeking to exercise redemption rights to certify to it whether such shareholder is acting in concert or as a group with any other shareholder. Such certifications, together with other

public information relating to stock ownership available to Horizon at that time, such as Section 13D, Section 13G and Section 16 filings under the Exchange Act, will be the sole basis on which Horizon makes the above-referenced determination. Your inability to redeem any such excess shares will reduce your influence over Horizon's ability to consummate the business combination and you could suffer a material loss on your investment in Horizon if you sell such excess shares in open market transactions. Additionally, you will not receive redemption distributions with respect to such excess shares if Horizon consummates the business combination. As a result, you will continue to hold that number of shares aggregating to more than 15% of the public shares and, in order to dispose of such excess shares, would be required to sell your stock in open market transactions, potentially at a loss. Horizon cannot assure you that the value of such excess shares will appreciate over time following the business combination or that the market price of the public shares will exceed the per-share redemption price. Notwithstanding the foregoing, shareholders may challenge Horizon's determination as to whether a shareholder is acting in concert or as a group with another shareholder in a court of competent jurisdiction.

However, Horizon's shareholders' ability to vote all of their shares (including such excess shares) for or against the business combination is not restricted by this limitation on redemption.

***There is no guarantee that a shareholder's decision whether to redeem its shares for a pro rata portion of the Trust Account will put the shareholder in a better future economic position.***

Horizon can give no assurance as to the price at which a shareholder may be able to sell its public shares in the future following the completion of the business combination or any alternative business combination. Certain events following the consummation of any initial business combination, including the business combination, may cause an increase in Horizon's share price, and may result in a lower value realized now than a shareholder of Horizon might realize in the future had the shareholder not redeemed its shares. Similarly, if a shareholder does not redeem its shares, the shareholder will bear the risk of ownership of the public shares after the consummation of any initial business combination, and there can be no assurance that a shareholder can sell its shares in the future for a greater amount than the redemption price set forth in this proxy statement. A shareholder should consult the shareholder's own tax and/or financial advisor for assistance on how this may affect his, her or its individual situation.

#### **Risks if the Business Combination is not Consummated**

***If Horizon is not able to complete the business combination with Vivid Seats by August 25, 2022 (or if such date is extended at a duly called meeting of shareholders, such later date) nor able to complete another initial business combination by such date, Horizon would cease all operations except for the purpose of winding up and it would redeem its public shares and liquidate, in which case Horizon's public shareholders may receive only \$10.00 per share, or less than such amount in certain circumstances, and Horizon's warrants will expire worthless.***

If Horizon is not able to complete the business combination with Vivid Seats by August 25, 2022 (or if such date is extended at a duly called meeting of shareholders, such later date) nor able to complete another initial business combination by such date, Horizon will: (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of our remaining shareholders and our board of directors, liquidate and dissolve, subject, in each case, to Horizon's obligations under Cayman Islands law to provide for claims of creditors and the other requirements of applicable law. In such case, Horizon's public shareholders may receive only \$10.00 per share, or less than \$10.00 per share, on the redemption of their shares, and Horizon's warrants will expire worthless.

***You will not have any rights or interests in funds from the Trust Account, except under certain limited circumstances. To liquidate your investment, therefore, you may be forced to sell your public shares or Horizon IPO Public Warrants, potentially at a loss.***

Horizon's public shareholders will be entitled to receive funds from the Trust Account only upon the earlier to occur of: (1) the completion of Horizon's initial business combination, and then only in connection with those Horizon Class A ordinary shares that such shareholder properly elected to redeem, subject to the limitations described herein; (2) the redemption of any public shares properly tendered in connection with a shareholder vote to amend Horizon's amended and restated memorandum and articles of association to modify the substance or timing of its obligation to redeem 100% of its public shares if Horizon does not complete its initial business combination within the required time period; and (3) the redemption of all of Horizon's public shares if Horizon is unable to complete its initial business combination by August 25, 2022 (or if such date is extended at a duly called meeting of shareholders, such later date), subject to applicable law and as further described herein. In that case, public shareholders may be forced to wait beyond the end of the required time period before they receive funds from the Trust Account. In no other circumstances will a public shareholder have any right or interest of any kind in the Trust Account. Holders of warrants will not have any right to the proceeds held in the Trust Account with respect to the warrants. Accordingly, to liquidate your investment, you may be forced to sell your public shares or Horizon IPO Public Warrants, potentially at a loss.

***If the funds not being held in the Trust Account are insufficient to allow Horizon to operate until at least August 25, 2022 (or if such date is extended at a duly called meeting of Horizon's shareholders, such later date), Horizon may be unable to complete its initial business combination.***

The funds available to Horizon outside of the Trust Account may not be sufficient to allow it to operate until August 25, 2022 (or if such date is extended at a duly called meeting of Horizon's shareholders, such later date), assuming that Horizon's initial business combination is not completed during that time. Horizon expects to incur significant costs in pursuit of its acquisition plans. However, its affiliates are not obligated to make loans to Horizon or invest in it in the future, and Horizon may not be able to raise additional financing from unaffiliated parties necessary to fund its expenses. Any such event in the future may negatively impact the analysis regarding Horizon's ability to continue as a going concern at such time.

Of the funds available to Horizon, Horizon could use a portion of the funds to pay fees to consultants to assist Horizon with its search for a target business. Horizon could also use a portion of the funds as a down payment or to fund a "no-shop" provision (a provision in letters of intent or Transaction Agreements designed to keep target businesses from "shopping" around for transactions with other companies or investors on terms more favorable to such target businesses) with respect to a particular proposed business combination, although Horizon does not have any current intention to do so. If Horizon entered into a letter of intent or transaction agreement where Horizon paid for the right to receive exclusivity from a target business and were subsequently required to forfeit such funds (whether as a result of Horizon's breach or otherwise), Horizon might not have sufficient funds to continue searching for, or conduct due diligence with respect to, a target business. If Horizon is unable to complete its initial business combination, its public shareholders may receive only approximately \$10.00 per share, or less in certain circumstances, on the liquidation of the Trust Account and Horizon's warrants will expire worthless. See "— If third parties bring claims against Horizon, the proceeds held in the Trust Account could be reduced and the per share redemption amount received by holders of Horizon Class A ordinary shares may be less than \$10.00 per share" and other risk factors herein.

## **Risks Related to Organizational Structure After the Business Combination**

***Vivid Seats PubCo's Private Equity Owner will control us, and its interests may conflict with ours or yours in the future.***

Immediately following the Closing, Hoya Topco, which is controlled by our Private Equity Owner and its affiliates, will control approximately 60.6% of the voting power of our outstanding common stock, which means that, based on its percentage voting power controlled after the business combination, our Private Equity Owner

will control the vote of all matters submitted to a vote of our shareholders. This control will enable our Private Equity Owner to control the election of the members of the Vivid Seats Board (subject to the terms of the Stockholders' Agreement) and all other corporate decisions. Even when our Private Equity Owner ceases to control a majority of the total voting power, for so long as our Private Equity Owner continues to own a significant percentage of our common stock, our Private Equity Owner will still be able to significantly influence the composition of our Board and the approval of actions requiring shareholder approval. Accordingly, for such period of time, our Private Equity Owner will have significant influence with respect to our management, business plans and policies, including the appointment and removal of our officers, decisions on whether to raise future capital and amending our charter and bylaws, which govern the rights attached to our common stock. In particular, for so long as our Private Equity Owner continues to own a significant percentage of our common stock, our Private Equity Owner will be able to cause or prevent a change of control of us or a change in the composition of the Vivid Seats Board and could preclude any unsolicited acquisition of us. The concentration of ownership could deprive you of an opportunity to receive a premium for your shares of Vivid Seats Class A common stock as part of a sale of us and ultimately might affect the market price of the Vivid Seats Class A common stock.

In connection with the business combination, we will enter into a Stockholders' Agreement with Hoya Topco, which is controlled by our Private Equity Owner, that provides the Topco Equityholders (as defined herein) the right to nominate (i) five (5) directors to the Vivid Seats Board (as defined herein), so long as the Topco Equityholders, in the aggregate, beneficially own at least 24% of the aggregate number of shares of Vivid Seats PubCo common stock that are issued and outstanding on the Closing Date (the "Closing Amount"), of which at least one (1) will qualify as an "independent director" under applicable stock exchange regulations, (ii) four (4) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 18% but less than 24% of the Closing Amount, (iii) three (3) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 12% but less than 18% of the Closing Amount, (iv) two (2) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 6% but less than 12% of the Closing Amount and (v) until the date the Topco Equityholders, in the aggregate, beneficially own a number of voting shares representing less than five percent (5%) off the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Topco Equityholders on the Closing Date, one (1) director to the Vivid Seats Board. Pursuant to the foregoing provisions of the Stockholder's Agreement, immediately following the Closing, Vivid Seats PubCo's Private Equity Owner will be able to designate the majority of the directors of the Vivid Seats Board and generally have control over the business and affairs of Vivid Seats PubCo. See "Proposal No. 1 — The Business Combination Proposal — Related Agreements — Stockholders' Agreement" for more details with respect to the Stockholders' Agreement.

Our Private Equity Owner and its affiliates engage in a broad spectrum of activities, including investments in our industry generally. In the ordinary course of their business activities, our Private Equity Owner and its affiliates may engage in activities where their interests conflict with our interests or those of our other shareholders, such as investing in or advising businesses that directly or indirectly compete with certain portions of our business or are suppliers or customers of ours. The Vivid Seats PubCo Amended and Restated Charter to be effective at or prior to the Closing will provide that none of our Private Equity Owner, any of its affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his or her director and officer capacities) or its affiliates will have any duty to refrain from engaging, directly or indirectly, in the same business activities or similar business activities or lines of business in which we operate. Our Private Equity Owner also may pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. In addition, our Private Equity Owner may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to you or may not prove beneficial.



***Following the Closing, we will be a “controlled company” within the meaning of Nasdaq listing standards and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to shareholders of companies that are subject to such requirements.***

After the Closing, we will qualify as a “controlled company” within the meaning of the corporate governance standards of Nasdaq. Under these rules, a listed 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 requirements, including the requirement that (i) a majority of our board of directors consist of independent directors, (ii) we have a compensation committee that is composed entirely of independent directors and (iii) director nominees be selected or recommended to the board by independent directors.

We expect to rely on certain of these exemptions after the Closing. As a result, we will not have a compensation committee consisting entirely of independent directors and our directors will not be nominated or selected solely by independent directors. We may also rely on the other exemptions so long as we qualify as a controlled company. To the extent we rely on any of these exemption, holders of Vivid Seats Class A common stock will not have the same protections afforded to shareholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

***Our only material asset will be our direct and indirect interests in Hoya Intermediate, and we are accordingly dependent upon distributions from Hoya Intermediate to pay dividends, taxes and other expenses, including payments we are required to make under the Tax Receivable Agreement.***

Vivid Seats PubCo will be a holding company with no material assets other than its direct and indirect ownership of equity interests in Hoya Intermediate. As such, Vivid Seats PubCo will not have any independent means of generating revenue. We intend to cause Hoya Intermediate to make distributions to its members, including us, in an amount at least sufficient to allow us to pay all applicable taxes, to make payments under the Tax Receivable Agreement we will enter upon Closing with Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders, and to pay our corporate and other overhead expenses. To the extent that Vivid Seats PubCo needs funds, and Hoya Intermediate is restricted from making such distributions under applicable laws or regulations, or is otherwise unable to provide such funds, it could materially and adversely affect our liquidity and financial condition.

***The Tax Receivable Agreement will require us to make cash payments to Hoya Topco (or other parties that become entitled to rights to payment under the Tax Receivable Agreement) in respect of certain tax benefits and such payments may be substantial. In certain cases, payments under the Tax Receivable Agreement may (i) exceed any actual tax benefits or (ii) be accelerated.***

At the Closing of the business combination, Vivid Seats PubCo, Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders will enter into the Tax Receivable Agreement. Pursuant to the Tax Receivable Agreement, we will generally be required pay Hoya Topco and the other TRA Holders 85% of the amount of savings, if any, in U.S. federal, state, local, and foreign taxes that are based on, or measured with respect to, net income or profits, and any interest related thereto that the Tax Group (i.e., Vivid Seats PubCo and applicable consolidated, unitary, or combined subsidiaries) realizes, or is deemed to realize, as a result of certain Tax Attributes, which include:

- existing tax basis in certain assets of Hoya Intermediate and certain of its direct or indirect subsidiaries, including assets that will eventually be subject to depreciation or amortization, once placed in service;
- tax basis adjustments resulting from taxable exchanges of Intermediate Common Units (including any such adjustments resulting from certain payments made by us under the Tax Receivable Agreement) acquired by us from a TRA Holder pursuant to the terms of the Second A&R LLCA;



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- certain tax attributes of Blocker Corporations holding Intermediate Common Units that are acquired directly or indirectly by us pursuant to a Reorganization Transaction;
- certain tax benefits realized by us as a result of certain U.S. federal income tax allocations of taxable income or gain away from us to other members of Hoya Intermediate and deductions or losses to Vivid Seats PubCo and away from other members of Hoya Intermediate, in each case, as a result of the business combination; and
- tax deductions in respect of portions of certain payments made under the Tax Receivable Agreement.

Payments under the Tax Receivable Agreement generally will be based on the tax reporting positions that we determine (with the amount of subject payments determined in consultation with an advisory firm and subject to the TRA Holder Representative's review and consent), and the IRS or another taxing authority may challenge all or any part of a position taken with respect to Tax Attributes or the utilization thereof, as well as other tax positions that we take, and a court may sustain such a challenge. In the event that any Tax Attributes initially claimed or utilized by the Tax Group are disallowed, the TRA Holders will not be required to reimburse us for any excess payments that may previously have been made pursuant to the Tax Receivable Agreement, for example, due to adjustments resulting from examinations by taxing authorities. Rather, any excess payments made to such TRA Holders will be applied against and reduce any future cash payments otherwise required to be made by us to the applicable TRA Holders under the Tax Receivable Agreement, after the determination of such excess. However, a challenge to any Tax Attributes initially claimed or utilized by the Tax Group may not arise for a number of years following the initial time of such payment and, even if challenged earlier, such excess cash payment may be greater than the amount of future cash payments that we might otherwise be required to make under the terms of the Tax Receivable Agreement. As a result, there might not be future cash payments against which such excess can be applied and we could be required to make payments under the Tax Receivable Agreement in excess of the Tax Group's actual savings in respect of the Tax Attributes.

Moreover, the Tax Receivable Agreement will provide that, in certain early termination events (including certain changes of control, material breaches, or at our option subject to the approval of a majority of our independent directors), we will be required to make a lump-sum cash payment to all the TRA Holders equal to the present value of all forecasted future payments that would have otherwise been made under the Tax Receivable Agreement, which lump-sum payment would be based on certain assumptions, including those relating to there being sufficient future taxable income of the Tax Group to fully utilize the Tax Attributes over certain specified time periods and that all Intermediate Common Units (including Intermediate Common Units held by Blocker Corporations) that had not yet been exchanged for are deemed exchanged. The lump-sum payment could be material and could materially exceed any actual tax benefits that the Tax Group realizes subsequent to such payment.

Payments under the Tax Receivable Agreement will be our obligations and not obligations of Hoya Intermediate. Any actual increase in our allocable share of Hoya Intermediate and its relevant subsidiaries' tax basis in relevant assets, 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 exchanges, the market price of the Vivid Seats Class A common stock at the time of an exchange of Intermediate Common Units by a TRA Holder pursuant to the terms of the Second A&R LLCA and the amount and timing of the recognition of the Tax Group's income for applicable tax purposes. While many of the factors that will determine the amount of payments that we will be required to make under the Tax Receivable Agreement are outside of our control, the aggregate payments we will be required to make under the Tax Receivable Agreement could be substantial. There can be no assurance that Vivid Seats PubCo will be able to finance its obligations under the Tax Receivable Agreement in a manner that does not adversely affect its working capital and growth requirements.

Any payments made by us under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us. To the extent that we are unable to make timely payments under the Tax Receivable Agreement for any reason, the unpaid amounts will be deferred and will accrue interest until paid. Additionally, nonpayment for a specified period and/or under certain circumstances may constitute a material breach of a material obligation under the Tax Receivable Agreement and therefore accelerate payments due under the Tax Receivable Agreement. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the Tax Attributes that may be deemed realized under the Tax Receivable Agreement.

For more information, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Tax Receivable Agreement.”

***In certain circumstances, Hoya Intermediate will be required to make distributions to us and Hoya Topco, and the distributions that Hoya Intermediate will be required to make may be substantial.***

Hoya Intermediate is treated, and will continue to be treated, as a partnership for U.S. federal income tax purposes and, as such, generally is not subject to U.S. federal income tax. Instead, its taxable income is generally allocated to its members, including us. Pursuant to the Second A&R LLCA, following the Closing, Hoya Intermediate will make cash distributions, or tax distributions, to the members, including us, calculated using an assumed tax rate, to provide liquidity to its members to pay taxes on such member’s allocable share of the cumulative taxable income, reduced by cumulative taxable losses. Under applicable tax rules, Hoya Intermediate will be required to allocate net taxable income disproportionately to its members in certain circumstances. Because tax distributions may be made on a pro rata basis to all members and such tax distributions may be determined based on the member who is allocated the largest amount of taxable income on a per Intermediate Common Unit basis and an assumed tax rate that is the highest tax rate applicable to any member, Hoya Intermediate may be required to make tax distributions that, in the aggregate, exceed the amount of taxes that Hoya Intermediate would have paid if it were taxed on its net income at the assumed rate.

As a result of (i) potential differences in the amount of net taxable income allocable to us and to Hoya Topco, (ii) the lower maximum tax rate applicable to corporations than individuals and (iii) the use of an assumed tax rate in calculating Hoya Intermediate’s distribution obligations, we may receive distributions significantly in excess of our actual tax liabilities and our obligations to make payments under the Tax Receivable Agreement. If we do not distribute such cash balances as dividends on Vivid Seats Class A common stock and instead, for example, hold such cash balances or lend them to Hoya Intermediate, Hoya Topco would benefit from any value attributable to such accumulated cash balances as a result of its right to acquire shares of Vivid Seats Class A common stock or, at our election, an amount of cash equal to the fair market value thereof, in exchange for its Intermediate Common Units. We will have no obligation to distribute such cash balances to our shareholders, and no adjustments will be made to the consideration provided to an exchanging holder in connection with a direct exchange or redemption of Hoya Intermediate limited liability company interests under the Second A&R LLCA as a result of any retention of cash by Vivid Seats PubCo.

***If we were deemed an “investment company” under the Investment Company Act of 1940, as amended (the “Investment Company Act”), following the Closing, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.***

An issuer will generally be deemed to be an “investment company” for purposes of the Investment Company Act if:

- it is an “orthodox” investment company because it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities; or
- it is an inadvertent investment company because, absent an applicable exemption, it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis.

We believe that we are engaged primarily in the business of providing ticketing services and not primarily in the business of investing, reinvesting or trading in securities. We hold ourselves out as a full-service ticketing marketplace and do not propose to engage primarily in the business of investing, reinvesting or trading in securities. Accordingly, we do not believe that Vivid Seats PubCo or Hoya Intermediate is an “orthodox” investment company as described in the first bullet point above. Furthermore, Vivid Seats PubCo treats Hoya Intermediate as a majority-owned subsidiary for purposes of the Investment Company Act. Therefore, we believe that less than 40% of our total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis following the Closing will comprise assets that could be considered investment securities. Accordingly, we do not believe that Vivid Seats PubCo or Hoya Intermediate will be an inadvertent investment company by virtue of the 40% inadvertent investment company test as described in the second bullet point above. In addition, we believe we will not be an investment company under section 3(b)(1) of the Investment Company Act because we will be primarily engaged in a non-investment company business.

The Investment Company Act and the rules thereunder contain detailed parameters for the organization and operations of investment companies. Among other things, the Investment Company Act and the rules thereunder limit or prohibit transactions with affiliates, impose limitations on the issuance of debt and equity securities, prohibit the issuance of stock options, and impose certain governance requirements. Following the Closing, we intend to continue to conduct our operations so that we will not be deemed to be an investment company under the Investment Company Act. However, if anything were to happen that would cause us to be deemed to be an investment company under the Investment Company Act, requirements imposed by the Investment Company Act, including limitations on our capital structure, ability to transact business with affiliates (including Hoya Intermediate) and ability to compensate key employees, could make it impractical for us to continue our business as currently conducted, impair the agreements and arrangements between and among Hoya Intermediate, us or our senior management team, or any combination thereof and materially and adversely affect our business, financial condition and results of operations.

***Following the business combination, we expect to continue to pay dividends to our stockholders, but our ability to do so is subject to the discretion of our board of directors and may be limited by our holding company structure and applicable provisions of Delaware law.***

Although we expect to pay cash dividends to our stockholders following the business combination, our board of directors may, in its discretion, increase or decrease the level of dividends or discontinue the payment of dividends entirely. In addition, as a holding company, we are dependent upon the ability of Hoya Intermediate to generate earnings and cash flows and distribute them to us so that we may pay our obligations and expenses (including our taxes and payments under the Tax Receivable Agreement) and pay dividends to our stockholders. We expect to cause Hoya Intermediate to make distributions to its members, including us. However, the ability of Hoya Intermediate to make such distributions will be subject to its operating results, cash requirements and financial condition, restrictive covenants in our debt instruments and applicable Delaware law (which may limit the amount of funds available for distribution to its members). Our ability to declare and pay dividends to our stockholders is likewise subject to Delaware law (which may limit the amount of funds available for dividends). If, as a consequence of these various limitations and restrictions, we are unable to generate sufficient distributions from our business, we may not be able to make, or may be required to reduce or eliminate, the payment of dividends on Vivid Seats Class A common stock.

## **Risks Related to Being a Public Company**

***The market price and trading volume of our securities may be volatile and could decline significantly following the business combination.***

Securities markets worldwide experience significant price and volume fluctuations. This market volatility, as well as general economic, market or political conditions, could reduce the market price of Vivid Seats Class A common stock and warrants in spite of our operating performance. We cannot assure you that the market price of

Vivid Seats Class A common stock and warrants will not fluctuate widely or decline significantly in the future in response to a number of factors, including, among others, the following:

- the realization of any of the risk factors presented in this proxy statement/prospectus/consent solicitation statement;
- difficult global market and economic conditions;
- loss of investor confidence in the global financial markets and investing in general;
- inability to attract, retain or motivate our active executive managing directors, investment professionals, managing directors or other key personnel;
- inability to refinance or replace our Term Loan Facilities either on acceptable terms or at all;
- adverse market reaction to indebtedness we may incur, securities we may grant under our 2021 Plan or otherwise, or any other securities we may issue in the future, including shares of Vivid Seats Class A common stock;
- unanticipated variations in our quarterly operating results or dividends;
- failure to meet securities analysts' earnings estimates;
- publication of negative or inaccurate research reports about us or the live events or ticketing industry or the failure of securities analysts to provide adequate coverage of Vivid Seats Class A common stock in the future;
- changes in market valuations of similar companies;
- speculation in the press or investment community about our business;
- additional or unexpected changes or proposed changes in laws or regulations or differing interpretations thereof affecting our business or enforcement of these laws and regulations, or announcements relating to these matters; and
- increases in compliance or enforcement inquiries and investigations by regulatory authorities.

In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could harm our business.

***We may be subject to securities class action litigation, which may harm our business, financial condition and results of operations.***

Companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and damages, and divert management's attention from other business concerns, which could seriously harm our business, financial condition and results of operations.

We may also be called on to defend ourselves against lawsuits relating to our business operations. Some of these claims may seek significant damage amounts due to the nature of our business. Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of any such proceedings. A future on-payment outcome in a legal proceeding could have an adverse impact on our business, financial condition and results of operations. In addition, current and future litigation, regardless of its merits, could result in substantial legal fees, settlement or judgment costs and a diversion of management's attention and resources that are needed to successfully run our business.

***We have identified a material weakness in our internal control over financial reporting and may identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, which may result in material misstatements of our financial statements or cause us to fail to meet our periodic reporting obligations.***

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal control. Prior to this offering, we were a private company with limited accounting personnel and other resources with which to address our internal control over financial reporting. In connection with the audit of our financial statements for the fiscal year ended December 31, 2020, we identified deficiencies in our internal control over financial reporting, which in the aggregate, constitute a material weakness. 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 financial statements will not be prevented or detected on a timely basis. We determined that we had deficiencies related to implementation of segregation of duties as part of our control activities, establishment of clearly defined roles within our finance and accounting functions and the number of personnel in our finance and accounting functions with an appropriate level of technical accounting and SEC reporting experience, which in the aggregate, constitute a material weakness.

To address this material weakness, we plan to hire additional qualified personnel and establish more robust processes to support our internal control over financial reporting, including clearly defined roles and responsibilities and appropriate segregation of duties. While we intend to implement a plan to remediate this material weakness, we cannot predict the success of such plan or the outcome of our assessment of this plan at this time. If our steps are insufficient to successfully remediate the material weakness and otherwise establish and maintain an effective system of internal control over financial reporting, the reliability of our financial reporting, investor confidence in us, and the value of our common stock could be materially and adversely affected. We can give no assurance that this implementation will remediate this deficiency in internal control or that additional material weaknesses in our internal control over financial reporting will not be identified in the future. Our failure to implement and maintain effective internal control over financial reporting could result in errors in our financial statements that could result in a restatement of our financial statements, or cause us to fail to meet our periodic reporting obligations. Effective internal control over financial reporting is necessary for us to provide reliable and timely financial reports and, together with adequate disclosure controls and procedures, are designed to reasonably detect and prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation, could cause us to fail to meet our periodic reporting obligations. For as long as we are an “emerging growth company” under the JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404. We could be an “emerging growth company” for up to five years. An independent assessment of the effectiveness of our internal control over financial reporting could detect problems that our management’s assessment might not. Undetected material weaknesses in our internal control over financial reporting could lead to financial statement restatements and require us to incur the expense of remediation.

***We will be obligated to develop and maintain proper and effective internal control over financial reporting in order to comply with Section 404 of the Sarbanes-Oxley Act, and these internal controls may not be determined to be effective, which may adversely affect investor confidence in us and, as a result, the value of our common stock.***

Following the business combination, we will be required to comply with the SEC’s rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. Additionally, once we no longer qualify as an “emerging growth company,” we will be required to have our independent registered public accounting firm provide an attestation report on the effectiveness of our internal control over financial reporting. An adverse report may be issued in the event our independent registered public accounting firm is not satisfied with the level at which our controls are documented, designed or operating.

A material weakness is a deficiency, or combination of deficiencies, in internal controls, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal controls that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. When evaluating our internal control over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. If we identify any material weaknesses in our internal control over financial reporting or are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal control over financial reporting is ineffective, 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, we could fail to meet our reporting obligations or be required to restate our financial statements for prior periods. Investors may also lose confidence in the accuracy and completeness of our financial reports, the market price of Vivid Seats Class A common stock and warrants could be negatively affected, and we could become subject to investigations by Nasdaq, the SEC or other regulatory authorities, which would require additional financial and management resources.

***The obligations associated with being a public company will involve significant expenses and will require significant resources and management attention, which may divert from our business operations.***

As a public company, we will be subject to the reporting requirements of the Exchange Act and the Sarbanes-Oxley Act. The Exchange Act requires the filing of annual, quarterly and current reports with respect to a public company's business and financial condition. The Sarbanes-Oxley Act requires, among other things, that a public company establish and maintain effective internal control over financial reporting. As a result, we will incur significant legal, accounting and other expenses that we did not incur prior to the business combination. Our management team and many of our other employees will need to devote substantial time to compliance, and may not effectively or efficiently manage our transition into a public company.

These rules and regulations will result in us incurring substantial legal and financial compliance costs and will make some activities more time-consuming and costly. For example, these rules and regulations will likely make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers.

***We are an emerging growth company, and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make Vivid Seats Class A common stock less attractive to investors.***

We are an emerging growth company, and, for as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to "emerging growth companies," including:

- not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation or golden parachute payments not previously approved.
- Our status as an emerging growth company will end as soon as any of the following takes place:
  - the last day of the fiscal year in which we have more than \$1.07 billion in annual revenue;

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- the date we qualify as a “large accelerated filer,” with at least \$700 million of equity securities held by non-affiliates;
- the date on which we have issued, in any three-year period, more than \$1.0 billion in non-convertible debt securities; or
- the last day of the fiscal year ending after the fifth anniversary of the Closing of the business combination.

We cannot predict if investors will find our securities less attractive after the business combination if we choose to rely on any of the exemptions afforded emerging growth companies. If some investors find our securities less attractive because we rely on any of these exemptions, there may be a less active trading market for our securities and the market price of those securities may be more volatile.

Further, the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a registration statement under the Securities Act declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company, which is neither an emerging growth company nor a company that has opted out of using the extended transition period, difficult because of the potential differences in accounting standards used.

***A significant portion of our total outstanding shares of Vivid Seats Class A common stock are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of Vivid Seats Class A common stock to drop significantly, even if our business is doing well.***

Subject to certain exceptions, pursuant to the Stockholders’ Agreement, Sponsor and Hoya Topco are contractually restricted during the Lock-up Period from transferring any lock-up shares; provided that each of the Sponsor and Hoya Topco may transfer fifty percent of their lock-up shares on the date that is six months following the Closing Date and the remaining lock-up shares on any date, at least six months following the Closing Date, on which (i) the price per lock-up share exceeds \$15.00 per share for 20 trading days within a 30 day trading period and (ii) the average daily trading volume exceeds one million shares of Vivid Seats Class A common stock during such 30 trading day period.

Following the expiration of the Lock-up Period, neither Sponsor nor Hoya Topco will be restricted from selling shares of Vivid Seats Class A common stock held by them or that may be received by them in exchange for Intermediate Common Units, Vivid Seats Class B common stock or warrants, as the case may be, other than by applicable securities laws. As such, sales of a substantial number of shares of Vivid Seats 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 Vivid Seats Class A common stock. Upon completion of the business combination, Sponsor and the PIPE Investors will collectively own approximately 19.5% of Vivid Seats Class A common stock and Hoya Topco will own 100% of the Vivid Seats Class B common stock, translating to a 60.6% voting interest, assuming that no public shareholders redeem their public shares in connection with the business combination. Assuming redemption of 38,898,433 shares of Horizon Class A ordinary shares (which represents all redeemable Horizon Class A ordinary shares) are redeemed in connection with the business combination, in the aggregate, the collective ownership of Sponsor and the PIPE Investors would rise to 39.4% of Vivid Seats Class A common stock and the voting interest of Vivid Seats PubCo held by Hoya Topco would remain the same .

As restrictions on resale end and registration statements for the sale of shares of Vivid Seats Class A common stock, Vivid Seats Class B common stock and warrants by the parties to the Registration Rights Agreement are available for use, the sale or possibility of sale of these shares of Vivid Seats Class A common stock, Vivid Seats Class B common stock (after conversion to Vivid Seats Class A common stock) and warrants could have the effect of increasing the volatility in the market price of Vivid Seats Class A common stock or warrants, or decreasing the market price itself.

***Warrants will become exercisable for Vivid Seats Class A common stock, which will increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.***

Following the Closing, there will be 24,652,605 outstanding warrants to purchase 24,625,605 shares of Vivid Seats Class A common stock at an exercise price of \$11.50 per share, which warrants will become exercisable on the later of the date that is (i) 30 days following the Closing and (ii) August 25, 2021. All such warrants will be issued in exchange for the Horizon IPO Public Warrants (including 5,166,666 Horizon IPO Public Warrants purchased by Sponsor its affiliates in the IPO) and Horizon IPO Private Placement Warrants issued by Horizon in connection with the IPO. In addition, Sponsor will hold 17,000,000 Vivid Seats PubCo \$10.00 Exercise Warrants and 17,000,000 Vivid Seats PubCo \$15.00 Exercise Warrants. To the extent such warrants are exercised, additional shares of Vivid Seats Class A common stock will be issued, which will result in dilution to the holders of Vivid Seats Class A common stock and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market or the fact that such warrants may be exercised could adversely affect the market price of Vivid Seats Class A common stock.

In addition, following the Closing, there will be 6,000,000 Vivid Seats PubCo Class B Warrants held by Hoya TopCo. Upon exercise of a Hoya Intermediate Warrant by Hoya TopCo, a corresponding Vivid Seats PubCo Class B Warrant will be exercised automatically. Prior to the exercise of any such warrants, Hoya TopCo will own 118,200,000 shares of Vivid Seats Class B common stock, translating to an approximate 60.6% of Vivid Seats PubCo's voting power. Such Vivid Seats Class B common stock is cancelable upon the issuance of a share of Vivid Seats Class A common stock in exchange for Intermediate Common Units held by Hoya TopCo.

***An active trading market for our securities may not develop or be maintained.***

We can provide no assurance that an active trading market for Vivid Seats Class A common stock and warrants will develop after the Closing, or, if such a market develops, that we will be able to maintain an active trading market for those securities on Nasdaq or any other exchange in the future. If an active market for our securities does not develop or is not maintained after the business combination, or if we fail to satisfy the continued listing standards of Nasdaq for any reason and our securities are delisted, it may be difficult for our security holders to sell their securities without depressing the market price for the securities or at all. An inactive trading market may also impair our ability to both raise capital by selling shares of capital stock and acquire other complementary products, technologies or businesses by using our shares of capital stock as consideration.

***Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.***

The trading market for our securities will be influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. We will not control these analysts, and the analysts who publish information about our company may have relatively little experience with us or our industry, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us provide inaccurate research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of us or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.



***We may amend the terms of the Vivid Seats PubCo Warrants in a manner that may be adverse to holders of Vivid Seats Public IPO Warrants with the approval by the holders of at least 65% of the then outstanding Vivid Seats Public IPO Warrants. As a result, the exercise price of your Vivid Seats PubCo Warrants could be increased, the exercise period could be shortened and the number of shares of Vivid Seats Class A common stock purchasable upon exercise of a Vivid Seats PubCo Warrant could be decreased, all without a Vivid Seats PubCo Warrant holder's approval.***

Our Vivid Seats PubCo Warrants are issued in registered form under a warrant agreement (the "Existing Warrant Agreement") between Continental Stock Transfer & Trust Company, as warrant agent, and Horizon. The Existing Warrant Agreement provides that the terms of the Vivid Seats PubCo Warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision, but requires the approval by the holders of at least 65% of the then outstanding Vivid Seats Public IPO Warrants to make any change that adversely affects the interests of the registered holders of Vivid Seats Public IPO Warrants. Accordingly, we may amend the terms of the Vivid Seats Public IPO Warrants in a manner adverse to a holder if holders of at least 65% of the then outstanding Vivid Seats Public IPO Warrants approve of such amendment. Although our ability to amend the terms of the Vivid Seats Public IPO Warrants with the consent of at least 65% of the then outstanding Vivid Seats Public IPO Warrants is unlimited, examples of such amendments could be amendments to, among other things, increase the exercise price of the Vivid Seats PubCo Warrants, convert the Vivid Seats PubCo Warrants into cash or Vivid Seats Class A common stock, shorten the exercise period or decrease the number of shares of Vivid Seats Class A common stock purchasable upon exercise of a Vivid Seats PubCo Warrant.

***Registration of the shares of Vivid Seats Class A common stock issuable upon exercise of the Vivid Seats Public IPO Warrants under the Securities Act may not be in place when an investor desires to exercise Vivid Seats Public IPO Warrants.***

Under the terms of the Existing Warrant Agreement, we have agreed that as soon as practicable, but in no event later than 15 business days after the closing of our initial business combination, we will use our commercially reasonable efforts to file with the SEC a registration statement for the registration under the Securities Act of the shares of Vivid Seats Class A common stock issuable upon exercise of the Vivid Seats Public IPO Warrants and thereafter will use our commercially reasonable efforts to cause the same to become effective within 60 business days following our initial business combination and to maintain a current prospectus relating to the Vivid Seats Class A common stock issuable upon exercise of the Vivid Seats Public IPO Warrants, until the expiration of the Vivid Seats Public IPO Warrants in accordance with the provisions of the Existing Warrant Agreement. We cannot assure you that we will be able to do so if, for example, any facts or events arise which represent a fundamental change in the information set forth in the registration statement or prospectus, the financial statements contained or incorporated by reference therein are not current or correct or the SEC issues a stop order. If the shares issuable upon exercise of the Vivid Seats Public IPO Warrants are not registered under the Securities Act, we will be required to permit holders to exercise their Vivid Seats PubCo Warrants on a cashless basis. However, no Vivid Seats PubCo Warrant will be exercisable for cash or on a cashless basis, and we will not be obligated to issue any shares to holders seeking to exercise their warrants, unless the issuance of the shares upon such exercise is registered or qualified under the securities laws of the state of the exercising holder, or an exemption from registration is available. Notwithstanding the above, if the Vivid Seats Class A common stock is at the time of any exercise of a Vivid Seats PubCo Warrant not listed on a national securities exchange such that it satisfies the definition of a "covered security" under Section 18(b)(1) of the Securities Act, we may, at our option, require holders of Vivid Seats PubCo Warrants who exercise their warrants to do so on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act and, in the event we so elect, we will not be required to file or maintain in effect a registration statement, and in the event we do not so elect, we will use our commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available. In no event will we be required to net cash settle any Vivid Seats PubCo Warrant, or issue securities or other compensation in exchange for the Vivid Seats PubCo Warrants in the event that we are unable to register or qualify the shares underlying the Vivid Seats PubCo Warrants under applicable state securities laws and there is no exemption available. If the issuance of the shares of Vivid Seats Class A common stock upon exercise of the Vivid Seats PubCo Warrants is not so registered or qualified or exempt from

registration or qualification, the holder of such warrant will not be entitled to exercise such warrant and such warrant may have no value and expire worthless. In such event, holders who acquired their Vivid Seats PubCo Warrants as part of a purchase of units will have paid the full unit purchase price solely for the shares of Vivid Seats Class A common stock included in the units. If and when the Vivid Seats PubCo Warrants become redeemable by us, we may not exercise our redemption right if the issuance of shares of Vivid Seats Class A common stock upon exercise of the Vivid Seats PubCo Warrants is not exempt from registration or qualification under applicable state blue sky laws or we are unable to effect such registration or qualification.

***We may redeem your unexpired Vivid Seats Public IPO Warrants prior to their exercise at a time that is disadvantageous to holders of such warrants, thereby making their Vivid Seats Public IPO Warrants worthless.***

We have the ability to redeem outstanding Vivid Seats Public IPO Warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.01 per warrant, provided that the last reported sales price of Vivid Seats Class A common stock equals or exceeds \$18.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading-day period ending on the third trading day prior to the date on which we give proper notice of such redemption and provided certain other conditions are met. If and when the Vivid Seats Public IPO Warrants become redeemable by us, we may not exercise our redemption right if the issuance of shares of Vivid Seats Class A common stock upon exercise of the Vivid Seats Public IPO Warrants is not exempt from registration or qualification under applicable state blue sky laws or we are unable to effect such registration or qualification. We will use our commercially reasonable efforts to register or qualify such shares of Vivid Seats Class A common stock under the blue sky laws of the state of residence in those states in which the Vivid Seats Public IPO Warrants were offered by us in Horizon's initial public offering. Redemption of the outstanding Vivid Seats Public IPO Warrants could force you to: (i) exercise your Vivid Seats Public IPO Warrants and pay the exercise price therefor at a time when it may be disadvantageous for you to do so, (ii) sell your Vivid Seats Public IPO Warrants at the then-current market price when you might otherwise wish to hold your warrants or (iii) accept the nominal redemption price which, at the time the outstanding Vivid Seats Public IPO Warrants are called for redemption, is likely to be substantially less than the market value of your Vivid Seats Public IPO Warrants.

None of the Vivid Seats Private Placement IPO Warrants issued to Sponsor in a private placement that occurred concurrently with Horizon's initial public offering will be redeemable by us so long as they are held by Sponsor or its permitted transferees.

***Provisions in our organizational documents and certain rules imposed by regulatory authorities may delay or prevent our acquisition by a third-party.***

The Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws will contain several provisions that may make it more difficult or expensive for a third party to acquire control of us without the approval of our board of directors. These provisions, which may delay, prevent or deter a merger, acquisition, tender offer, proxy contest or other transaction that stockholders may consider favorable, include the following:

- the sole ability of directors to fill a vacancy on the board of directors;
- advance notice requirements for stockholder proposals and director nominations;
- after Vivid Seats PubCo no longer qualifies as a "controlled company" under applicable Nasdaq listing rules, provisions limiting stockholders' ability (i) to call special meetings of stockholders, (ii) to require extraordinary general meetings of stockholders to be called and (iii) to take action by written consent;
- the ability of the board of directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could be used, among other things, to institute a rights plan that would have the effect of significantly diluting the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our governing body.

- the division of the board of directors into three classes, with each class serving staggered three year terms; and
- the lack of cumulative voting for the election of directors.

These provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws could discourage potential takeover attempts and reduce the price that investors might be willing to pay for shares of Vivid Seats Class A common stock in the future, which could reduce the market price of Vivid Seats Class A common stock. For more information, see “Description of Vivid Seats PubCo Securities.”

***The provisions of the proposed Vivid Seats PubCo Amended and Restated Charter requiring exclusive forum in the Court of Chancery of the State of Delaware and the federal district courts of the United States for certain types of lawsuits may have the effect of discouraging lawsuits against its directors and officers.***

The proposed Vivid Seats PubCo Amended and Restated Charter provides that, to the fullest extent permitted by law, and unless we provide consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Vivid Seats PubCo Amended and Restated Charter or the Vivid Seats PubCo Amended and Restated Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine, provided that this provision, including for any “derivative action,” will not apply to suits to enforce a duty or liability created by the Securities Act, the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. The Vivid Seats PubCo Amended and Restated Charter will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. By becoming a stockholder in our company, you will be deemed to have notice of and consented to the exclusive forum provisions of the Vivid Seats PubCo Amended and Restated Charter. There is uncertainty as to whether a court would enforce such a provision relating to causes of action arising under the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

These provisions may have the effect of discouraging lawsuits against our directors and officers. The enforceability of similar choice of forum provisions in other companies’ certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any applicable action brought against us, a court could find the choice of forum provisions contained in the proposed Vivid Seats PubCo Amended and Restated Charter to be inapplicable or unenforceable in such action.

## EXTRAORDINARY GENERAL MEETING OF HORIZON SHAREHOLDERS

### General

Horizon is furnishing this proxy statement/prospectus/consent solicitation statement to its shareholders as part of the solicitation of proxies by Horizon's board of directors for use at the extraordinary general meeting of shareholders to be held on \_\_\_\_\_, 2021, and at any adjournment or postponement thereof. This proxy statement/prospectus/consent solicitation statement is first being furnished to Horizon's shareholders on or about \_\_\_\_\_, 2021. This proxy statement/prospectus/consent solicitation statement provides you with information you need to know to be able to vote or instruct your vote to be cast at the extraordinary general meeting.

### Date, Time and Place

The extraordinary general meeting of Horizon's shareholders will be held at \_\_\_\_\_ a.m. local time, on \_\_\_\_\_, 2021 at the offices of Kirkland & Ellis located at 601 Lexington Avenue, New York, NY 10022, and as a virtual meeting. You will be able to attend, vote your shares and submit questions during the extraordinary general meeting via a live webcast available at \_\_\_\_\_. The meeting will be held virtually over the internet by means of a live audio webcast.

To register for the virtual meeting, please follow these instructions as applicable to the nature of your ownership of Horizon's ordinary shares.

If your shares are registered in your name with Horizon's transfer agent and you wish to attend the virtual meeting, go to \_\_\_\_\_, enter the control number you received on your proxy card and click on the "Click here" to preregister for the online meeting link at the top of the page. Just prior to the start of the meeting you will need to log back into the meeting site using your control number. Pre-registration is recommended but is not required in order to attend.

Beneficial shareholders who wish to attend the virtual meeting must obtain a legal proxy by contacting their account representative at the bank, broker, or other nominee that holds their shares and e-mail a copy (a legible photograph is sufficient) of their legal proxy to \_\_\_\_\_. Beneficial shareholders who e-mail a valid legal proxy will be issued a meeting control number that will allow them to register to attend and participate in the online meeting. After contacting Horizon's transfer agent, a beneficial holder will receive an e-mail prior to the meeting with a link and instructions for entering the virtual meeting. Beneficial shareholders should contact Horizon's transfer agent at least five business days prior to the meeting date.

### Voting Power; Record Date for the Extraordinary General Meeting

You will be entitled to vote or direct votes to be cast at the extraordinary general meeting if you owned Horizon Class A ordinary shares or Horizon Class B ordinary shares at the close of business on \_\_\_\_\_, 2021, which is the record date for the extraordinary general meeting. You are entitled to one vote for each Horizon Class A ordinary share or Horizon Class B ordinary share that you owned as of the close of business on the record date. If your shares are held in "street name" or are in a margin or similar account, you should contact your broker, bank or other nominee to ensure that votes related to the shares you beneficially own are properly counted. On the record date, there were \_\_\_\_\_ Horizon Class A ordinary shares and \_\_\_\_\_ Horizon Class B ordinary shares outstanding in the aggregate, of which \_\_\_\_\_ are public shares and \_\_\_\_\_ are Horizon Class A ordinary shares underlying the private placement units held by Sponsor and \_\_\_\_\_ are founder shares held by the Sponsor and affiliates of the Sponsor.

### Vote of Sponsor, Directors and Officers of Horizon

In connection with its IPO, Horizon entered into agreements with each of Sponsor and Horizon's directors and officers pursuant to which each agreed to vote any Horizon Class A ordinary shares or Horizon Class B

ordinary shares owned by them in favor of the Business Combination Proposal. As of the date of this proxy statement/prospectus/consent solicitation statement, Sponsor and Horizon's directors and officers own an aggregate of 28.7% of Horizon's Class A ordinary shares and 100% of Horizon's Class B ordinary shares.

Sponsor and Horizon's directors and officers have waived any redemption rights, including with respect to shares of Horizon's Class A ordinary shares purchased in the IPO or in the aftermarket, in connection with the business combination. The founder shares and Horizon Class A ordinary shares underlying the private placement units held by Sponsor have no redemption rights upon Horizon's liquidation and will be worthless if no business combination is effected by Horizon by August 25, 2022 (or if such date is extended at a duly called meeting of Horizon's shareholders, such later date). However, Sponsor and Horizon's directors and officers are entitled to redemption rights upon Horizon's liquidation with respect to any other Horizon Class A ordinary shares they may own.

### **Quorum and Required Vote for Proposals for the Extraordinary General Meeting**

A quorum of Horizon shareholders is necessary to hold a valid meeting. A quorum will be present at the extraordinary general meeting if a majority of the Horizon ordinary shares outstanding and entitled to vote at the extraordinary general meeting is represented in person or by proxy. Abstentions will count as present for the purposes of establishing a quorum.

The approval of the Business Combination Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal requires an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of the Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting.

The approval of the Merger Proposal requires a special resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of not less than two-thirds of the Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting.

Abstentions will have no effect on the Proposals. Brokers are not entitled to vote on the Proposals absent voting instructions from the beneficial holder and, consequently, broker non-votes will have no effect on the Proposals.

The Closing is conditioned on the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal at the extraordinary general meeting. The Organizational Documents Proposals are conditioned on the approval of the Business Combination Proposal, the Merger Proposal and the NYSE Proposal. The Adjournment Proposal is not conditioned on the approval of any other proposal set forth in this proxy statement/prospectus/consent solicitation statement.

### **Recommendation to Horizon Shareholders**

After careful consideration, the Horizon board of directors recommends that Horizon shareholders vote "FOR" each Proposal being submitted to a vote of the Horizon shareholders at the extraordinary general meeting.

For a more complete description of Horizon's reasons for the approval of the business combination and the recommendation of the Horizon's board of directors, see the section entitled "Proposal No. 1 — The Business Combination Proposal — Horizon's Board of Directors' Reasons for the Approval of the Business Combination."

### **Voting Your Shares**

Each Horizon Class A ordinary share and each Horizon Class B ordinary share that you own in your name entitles you to one vote on each of the Proposals for the extraordinary general meeting. Your one or more proxy

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cards show the number of Horizon Class A ordinary shares and Horizon Class B ordinary shares that you own. There are several ways to vote your Horizon Class A ordinary shares and Horizon Class B ordinary shares:

- You can vote your shares by completing, signing, dating and returning the enclosed proxy card in the postage-paid envelope provided. If you hold your shares in “street name” through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee to ensure that your shares are represented and voted at the extraordinary general meeting. If you vote by proxy card, your “proxy”, whose name is listed on the proxy card, will vote your shares as you instruct on the proxy card. If you sign and return the proxy card but do not give instructions on how to vote your shares, your Horizon Class A ordinary shares or Horizon Class B ordinary shares will be voted as recommended by Horizon’s board of directors. Horizon’s board of directors recommends voting “FOR” the Business Combination Proposal, “FOR” the Merger Proposal, “FOR” the Organizational Documents Proposals, “FOR” the NYSE Proposal and “FOR” the Adjournment Proposal.
- You can attend the extraordinary general meeting and vote in person even if you have previously voted by submitting a proxy pursuant to any of the methods noted above. You will be given a ballot when you arrive. However, if your Horizon Class A ordinary shares or Horizon Class B ordinary shares are held in the name of your broker, bank or other nominee, you must get a proxy from the broker, bank or other nominee. That is the only way Horizon can be sure that the broker, bank or nominee has not already voted your Horizon Class A ordinary shares or Horizon Class B ordinary shares.

### **Revoking Your Proxy**

If you give a proxy, you may revoke it at any time before the extraordinary general meeting or at such meeting by doing any one of the following:

- you may send another proxy card with a later date;
- you may notify Horizon’s secretary, in writing, before the extraordinary general meeting that you have revoked your proxy; or
- you may attend the extraordinary general meeting, revoke your proxy, and vote in person, as indicated above.

### **No Additional Matters May Be Presented at the Extraordinary General Meeting**

The extraordinary general meeting has been called to consider only the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals, the NYSE Proposal and the Adjournment Proposal. Under Horizon’s amended and restated memorandum and articles of association, other than procedural matters incident to the conduct of the extraordinary general meeting, no other matters may be considered at the extraordinary general meeting if they are not included in this proxy statement/prospectus/consent solicitation statement, which serves as the notice of the extraordinary general meeting.

### **Who Can Answer Your Questions About Voting Your Shares**

If you have any questions about how to vote or direct a vote in respect of your Horizon Class A ordinary shares or Horizon Class B ordinary shares, you may call Morrow Sodali LLC, Horizon’s proxy solicitor, at (800) 662-5200 (banks and brokerage firms, please call collect: (203) 658-9400).

### **Redemption Rights**

Under Horizon’s amended and restated memorandum and articles of association, any holders of Horizon’s Class A ordinary shares may elect that such shares be redeemed in exchange for a pro rata share of the aggregate

amount on deposit in the Trust Account, including interest but net of franchise and income taxes payable, calculated as of two (2) business days prior to the Closing. If demand is properly made and the business combination is consummated, these shares, immediately prior to the business combination, will cease to be outstanding and will represent only the right to receive a pro rata share of the aggregate amount on deposit in the Trust Account, which holds the proceeds of Horizon's IPO (calculated as of two (2) business days prior to the Closing, including interest but net of franchise and income taxes payable). For illustrative purposes, based on the fair value of marketable securities held in the Trust Account as of December 31, 2020 of approximately \$544 million, the estimated per share redemption price would have been approximately \$10.00.

In order to exercise your redemption rights, you must:

- if you hold your Horizon Class A ordinary shares through units, elect to separate your units into the underlying public shares and Horizon IPO Public Warrants prior to exercising your redemption rights with respect to the public shares;
- prior to 5:00 p.m., Eastern Daylight time, on \_\_\_\_\_, 2021 (two (2) business days before the extraordinary general meeting), tender your shares physically or electronically and submit a request in writing that Horizon redeem your public shares for cash to Continental Stock Transfer & Trust Company, Horizon's transfer agent, to the attention of Mark Zimkind at One State Street Plaza, 30<sup>th</sup> Floor New York, NY 10004, or by email at [mzimkind@continentalstock.com](mailto:mzimkind@continentalstock.com); and
- tender your Horizon Class A ordinary shares either physically or electronically through DTC to the transfer agent at least two (2) business days before the extraordinary general meeting. Shareholders seeking to exercise their redemption rights and opting to deliver physical certificates should allot sufficient time to obtain physical certificates from the transfer agent and time to effect delivery. It is Horizon's understanding that shareholders should generally allot at least two weeks to obtain physical certificates from the transfer agent. However, Horizon does not have any control over this process and it may take longer than two weeks. Shareholders who hold their shares in street name will have to coordinate with their bank, broker or other nominee to have the shares certificated or delivered electronically. If you do not submit a written request and deliver your Horizon Class A ordinary shares as described above, your shares will not be redeemed.

Any demand for redemption, once made, may be withdrawn at any time until the deadline for exercising redemption requests (and submitting shares to the transfer agent) and thereafter, with Horizon's consent, until the vote is taken with respect to the business combination. If you tendered your shares for redemption to the transfer agent and decide within the required timeframe not to exercise your redemption rights, you may request that the transfer agent return the shares (physically or electronically). You may make such request by contacting the transfer agent at the phone number or address listed above.

Holders of outstanding units of Horizon must separate the underlying public shares and Horizon IPO Public Warrants prior to exercising redemption rights with respect to the public shares. If you hold units registered in your own name, you must deliver the certificate for such units to Continental Stock Transfer & Trust Company with written instructions to separate such units into public shares and Horizon IPO Public Warrants. This must be completed far enough in advance to permit the mailing of the public share certificates back to you so that you may then exercise your redemption rights upon the separation of the public shares from the units.

If a broker, dealer, commercial bank, trust company or other nominee holds your units, you must instruct such nominee to separate your units. Your nominee must send written instructions by facsimile to Continental Stock Transfer & Trust Company. Such written instructions must include the number of units to be split and the nominee holding such units. Your nominee must also initiate electronically, using DTC's DWAC (deposit withdrawal at custodian) system, a withdrawal of the relevant units and a deposit of an equal number of public shares and Horizon IPO Public Warrants. This must be completed far enough in advance to permit your nominee to exercise your redemption rights upon the separation of the public shares from the units. While this is typically done electronically on the same business day, you should allow at least one full business day to accomplish the

separation. If you fail to cause your public shares to be separated in a timely manner, you will likely not be able to exercise your redemption rights.

Prior to exercising redemption rights, shareholders should verify the market price of Horizon Class A ordinary shares as they may receive higher proceeds from the sale of their Horizon Class A ordinary shares in the public market than from exercising their redemption rights if the market price per share is higher than the redemption price. Horizon cannot assure you that you will be able to sell your Horizon Class A ordinary shares in the open market, even if the market price per share is higher than the redemption price stated above, as there may not be sufficient liquidity in the Horizon Class A ordinary shares when you wish to sell your shares.

If you exercise your redemption rights, your Horizon Class A ordinary shares will cease to be outstanding immediately prior to the business combination and will only represent the right to receive a pro rata share of the aggregate amount on deposit in the Trust Account. You will no longer own those shares and will have no right to participate in, or have any interest in, the future growth of Horizon following the business combination, if any. You will be entitled to receive cash for these shares only if you properly and timely demand redemption.

If the business combination is not approved and Horizon does not consummate a “business combination” (as defined in Horizon’s amended and restated memorandum and articles of association) by August 25, 2022 (or if such date is extended at a duly called meeting of Horizon’s shareholders, such later date), Horizon will be required to dissolve and liquidate the Trust Account by returning the then-remaining funds in such account to the public shareholders and the Horizon Warrants will expire worthless.

### **Appraisal Rights**

Under Section 239 of the CICA, the holders of Horizon public shares will not have appraisal or dissenter rights in connection with the business combination. Holders of public shares should consult their Cayman Islands legal counsel regarding their rights under the CICA.

### **Proxy Solicitation Costs**

Horizon is soliciting proxies on behalf of its board of directors. This solicitation is being made by mail but also may be made by telephone or in person. Horizon and its directors, officers and employees may also solicit proxies in person. Horizon will file with the SEC all scripts and other electronic communications as proxy soliciting materials. Horizon will bear the cost of the solicitation.

Horizon has hired \_\_\_\_\_ to assist in the proxy solicitation process. Horizon will pay that firm a fee of \$ \_\_\_\_\_, plus disbursements. Horizon will ask banks, brokers and other institutions, nominees and fiduciaries to forward the proxy materials to their principals and to obtain their authority to execute proxies and voting instructions. Horizon will reimburse them for their reasonable expenses.



## PROPOSAL NO. 1 — THE BUSINESS COMBINATION PROPOSAL

Horizon is asking its shareholders to approve and adopt the Transaction Agreement and the transactions contemplated thereby. Horizon shareholders should read carefully this proxy statement/prospectus/consent solicitation statement in its entirety for more detailed information concerning the Transaction Agreement, a copy of which is attached as *Annex A* to this proxy statement/prospectus/consent solicitation statement. Please see the subsection entitled “The Transaction Agreement” below for additional information and a summary of certain terms of the Transaction Agreement. You are urged to read carefully the Transaction Agreement in its entirety before voting on this proposal.

Because Horizon is holding an extraordinary general meeting of shareholders to vote on the business combination, Horizon may consummate the business combination only if it is approved (in person or by proxy) by the holders of a majority of the outstanding Horizon Class A ordinary shares and Horizon Class B ordinary shares entitled to vote thereon at the extraordinary general meeting, voting as a single class.

### The Transaction Agreement

*This subsection of the proxy statement/prospectus/consent solicitation statement describes the material provisions of the Transaction Agreement, but does not purport to describe all of the terms of the Transaction Agreement. The following summary is qualified in its entirety by reference to the complete text of the Transaction Agreement, a copy of which is attached as Annex A hereto. You are urged to read the Transaction Agreement in its entirety because it is the primary legal document that governs the business combination.*

*The Transaction Agreement contains representations, warranties and covenants that the parties made to each other as of the date of the Transaction Agreement or other specific dates. The assertions embodied in those representations, warranties and covenants were made and will be made for purposes of the contract among the parties and are subject to important qualifications and limitations agreed to by the parties in connection with negotiating the Transaction Agreement. The representations, warranties and covenants in the Transaction Agreement are also modified in important part by the underlying disclosure schedules, which are referred to as the “Schedules,” which are not filed publicly and which are subject to a contractual standard of materiality different from that generally applicable to stockholders and were used for the purpose of allocating risk among the parties rather than establishing matters as facts. Horizon does not believe that the Schedules contain information that is material to an investment decision.*

### General Description of the Transaction Agreement; Consideration

On April 21, 2021, Horizon entered into the Transaction Agreement, pursuant to which: (a) at least one (1) day prior to the Merger, and in accordance with the Exchange Agreement, Sponsor and Horizon will effect the Exchange; (b) prior to the Merger, Hoya Topco and Vivid Seats will effect the Pre-Closing Restructuring (as defined in the Transaction Agreement), which will include the Class A Redemption and the Intermediate Merger; (c) at the Effective Time, Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving entity in the Merger, and by virtue of the Merger, (i) each Horizon ordinary share will be converted into a share of Vivid Seats Class A common stock, (ii) each Horizon Warrant will be converted into a corresponding Vivid Seats PubCo Warrant and (iii) the certificate of incorporation and bylaws of Vivid Seats PubCo in effect immediately prior to the Effective Time will be amended and restated to the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws; (d) at the Closing, the Second A&R LLCA will become effective; (e) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Vivid Seats PubCo will purchase the Crescent Blockers from the Blocker Sellers in the Blocker Purchase; (f) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Hoya Intermediate will issue to Vivid Seats PubCo Intermediate Common Units and warrants to purchase Intermediate Common Units in the Intermediate Contribution and Issuance, which contribution includes Vivid Seats PubCo’s contribution of cash in an amount equal to (A) all available cash of Vivid Seats PubCo following the Merger and the PIPE Subscription, *minus* (B) the Blocker Purchase Price, *minus* (C) the Blocker Tax Liabilities; (g) at the Closing and immediately following the

effectiveness of the Second A&R LLCA, Hoya Intermediate will redeem all of the Intermediate Common Units held by the Redeemed Crescent Parties in the Crescent Redemption; (h) at the Closing and immediately following the effectiveness of the Second A&R LLCA, Vivid Seats PubCo will issue 118,200,000 shares of Vivid Seats Class B common stock and 6,000,000 warrants to purchase Vivid Seats Class B common stock to Hoya Topco in the Class B Issuance; and (i) Hoya Intermediate will contribute a portion of the funds received from Vivid Seats PubCo to Hoya Midco. Immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units, resulting in a cash payment of \$225.1 million. Upon the Closing, Vivid Seats expects to apply \$488.9 million of the business combination and PIPE Subscription proceeds towards debt repayments resulting in the full repayment of its May 2020 First Lien Loan and a partial repayment of its June 2017 First Lien Loan. As a result of the business combination, assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Hoya Topco will hold approximately 60.6% of the issued and outstanding Intermediate Common Units and Vivid Seats PubCo will hold approximately 39.4% of the Intermediate Common Units, which interests will be controlled by the Private Equity Owner for so long as it controls Hoya Topco. Following the consummation of the business combination, Vivid Seats PubCo's assets will consist of its direct and indirect interests in Hoya Intermediate.

### **Closing of the Business Combination**

The Closing will take place electronically through the exchange of documents via email or facsimile on the date which is two (2) business days after the first date on which all conditions set forth in the Transaction Agreement shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof) or such other time and place as Hoya Topco and Horizon may mutually agree in writing.

### **Material Adverse Effect**

Under the Transaction Agreement, certain warranties of the Vivid Seats Companies are qualified in whole or in part by a material adverse effect standard for purposes of determining whether a breach of such warranties has occurred.

Pursuant to the Transaction Agreement, a "Company Material Adverse Effect," with respect to the Vivid Seats Companies means: any event, series of events, condition, state of facts, development, change, circumstance, occurrence or effect (collectively, "Events") that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, results of operations or financial condition of Hoya Topco and its subsidiaries, taken as a whole or (ii) the ability of the Vivid Seats Companies to consummate the business combination; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a "Company Material Adverse Effect": (a) any change in applicable laws or GAAP or any interpretation thereof following the date of the Transaction Agreement, (b) any change in interest rates or economic, political, business or financial market conditions generally, (c) the taking of any action expressly required by or, with respect to Sections 7.1, 7.2 or 7.4 of the Transaction Agreement, permitted to be taken under the Transaction Agreement, (d) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures (as defined in the Transaction Agreement) or any change in such COVID-19 Measures or interpretations following the date of the Transaction Agreement), acts of nature or change in climate, or any declaration of a national emergency by any Governmental Authority (as defined in the Transaction Agreement), (e) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, or social conditions, (f) any failure in and of itself of the Vivid Seats Companies to meet any projections or forecasts, provided that the exception in this clause (f) shall not prevent or otherwise affect a determination that any change, effect or development underlying such change has resulted in or contributed to a Company Material Adverse Effect, (g) any Events generally applicable to the industries or markets in which the Vivid Seats Companies operate, (h) any action taken by, or at the request of, or with the

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express consent of Horizon; provided, that in the case of each of clauses (a), (b), (d), (e) and (g), any such Event to the extent it disproportionately affects the Vivid Seats Companies relative to other participants in the industries in which such persons operate shall not be excluded from the determination of whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect.

Under the Transaction Agreement, certain warranties of Horizon are qualified in whole or in part by a material adverse effect standard for purposes of determining whether a breach of such warranties has occurred.

Pursuant to the Transaction Agreement, a “Horizon Material Adverse Effect” with respect to Horizon, means: any Event that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, results of operations or financial condition of Horizon and Sponsor, taken as a whole or (ii) the ability of Horizon and Sponsor to consummate the business combination; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a “Horizon Material Adverse Effect”: (a) any change in applicable laws or GAAP or any interpretation thereof following the date of the Transaction Agreement, (b) any change in interest rates or economic, political, business or financial market conditions generally, (c) the taking of any action expressly required to be taken under the Transaction Agreement, (d) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures or any change in such COVID-19 Measures or interpretations following the date of the Transaction Agreement), acts of nature or change in climate, or any declaration of a national emergency by any Governmental Authority, (e) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, or social conditions, (f) the consummation and effects of any Horizon Share Redemptions, (g) any Events generally applicable to the industries or markets in which Horizon and Sponsor operate, (h) any action taken by, or at the request of, or with the express consent of the Vivid Seats Companies; provided, that in the case of each of clauses (a), (b), (d), (e) and (g), any such Event to the extent it disproportionately affects Sponsor and Horizon relative to other participants in the industries in which such Persons operate shall not be excluded from the determination of whether there has been, or would reasonably be expected to be, a Horizon Material Adverse Effect. Notwithstanding the foregoing, with respect to Horizon, the amount of the Horizon Share Redemptions or the failure to obtain the Horizon Stockholder Approval shall not be deemed to be a Horizon Material Adverse Effect.

### **Conditions to the Closing of the Business Combination**

*Conditions to Obligations of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to Consummate the Business Combination.* The obligations of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to consummate the business combination are subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by all of such parties:

- The Horizon Shareholder Approval will have been obtained;
- Specified regulatory approvals shall have been obtained or the applicable waiting period shall have expired or been terminated;
- No order, injunction, judgment, law or similar determination by a court or other governmental authority will be pending that prohibits or otherwise prevents the business combination;
- The registration statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the registration statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;
- The Pre-Closing Restructuring shall have been consummated prior to the Closing; and
- The shares of Vivid Seats Class A common stock to be issued in connection with the business combination shall have been approved for listing on Nasdaq and such approval shall not be subject to any conditions or any plan of compliance to which Vivid Seats PubCo would be subject after the Closing.

*Conditions to Obligations of Horizon to Consummate the Business Combination.* The obligations of Horizon to consummate the business combination are subject to the satisfaction at or prior to the Closing of the following conditions, any one or more of which may be waived in writing by Horizon:

- Certain fundamental representations and warranties of the Vivid Seats Companies related to organization, due authorization, absence of changes and brokers' fees contained in the Transaction Agreement shall be true and correct in all material respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- The representations and warranties of the Vivid Seats Companies related to capitalization contained in the Transaction Agreement shall be true and correct in all respects other than *de minimis* inaccuracies as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- Each of the other representations and warranties of the Vivid Seats Companies contained in the Transaction Agreement shall be true and correct (without giving effect to any limitation as to "materiality" or "Company Material Adverse Effect" or another similar materiality qualification set forth therein) as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, have not had, and would not reasonably be expected to have a Company Material Adverse Effect (as defined in the Transaction Agreement);
- Each of the covenants of Hoya Topco and the Vivid Seats Companies contained in the Transaction Agreement shall have been performed as of or prior to the Closing; and
- There shall not have occurred a Company Material Adverse Effect.

*Conditions to Obligations of Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to Consummate the Business Combination.* The obligations of Hoya Topco, Hoya Intermediate and Vivid Seats PubCo to consummate the business combination are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Hoya Topco, Hoya Intermediate and Vivid Seats PubCo:

- Certain fundamental representations and warranties of Horizon related to organization, due authorization, the Trust Account, absence of changes and brokers' fees contained in the Transaction Agreement shall be true and correct in all material respects as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- The representations and warranties of Horizon related to capitalization contained in the Transaction Agreement shall be true and correct in all respects other than *de minimis* inaccuracies as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date;
- Each of the other representations and warranties of Horizon contained in the Transaction Agreement shall be true and correct (without giving effect to any limitation as to "materiality" or "Horizon Material Adverse Effect" or another similar materiality qualification set forth therein) as of the Closing Date, except with respect to such representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct as of such date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, have not had, and would not reasonably be expected to have a Horizon Material Adverse Effect (as defined in the Transaction Agreement);
- Each of the covenants of Horizon contained in the Transaction Agreement shall have been performed as of or prior to the Closing; and the Available Horizon Cash will be no less than the Minimum Available Horizon Cash Amount immediately prior to the Closing (after deducting the amount required to satisfy the Horizon Share Redemption Amount and excluding transaction expenses of Vivid Seats and Horizon).

## **Representations and Warranties**

The Transaction Agreement contains customary representations and warranties by the parties, including the following representations and warranties by the Vivid Seats Companies: company organization, subsidiaries, due authorization, no violation, governmental authorizations, capitalization, financial statements, undisclosed liabilities, litigation and proceedings, legal compliance, contracts, no defaults, company benefit plans, labor relations, taxes, property, environmental, health and safety, intellectual property, absence of changes, anti-corruption compliance, insurance, subscription-related representations, registration statement and proxy statement/registration statement, brokers' fees, no outside reliance and no additional representations or warranties. Additionally, Horizon made customary representations and warranties relating to: company organization, due authorization, no violation, governmental authorizations, capitalization, internal controls, listing and financial statements, no undisclosed liabilities, litigation and proceedings, taxes, SEC filings, Trust Account, Investment Company Act, JOBS Act, absence of changes, indebtedness, business activities, NYSE stock market quotation, registration statement and proxy statement, takeover statutes and charter provisions, brokers' fees, no outside reliance and no additional representations or warranties.

## **Covenants of the Parties**

*Covenants of Hoya Topco and the Vivid Seats Companies.*

Hoya Topco and the Vivid Seats Companies made certain covenants under the Transaction Agreement, including, among others, the following:

Hoya Topco, Hoya Intermediate and Vivid Seats PubCo have agreed that from the date of the Transaction Agreement through the earlier of the Closing or the termination of the Transaction Agreement (the "Interim Period"), they will, and will cause their respective subsidiaries to, except as otherwise contemplated by the Transaction Agreement (including the Pre-Closing Restructuring) or the ancillary agreements referenced therein, as consented to by Horizon in writing (which consent will not be unreasonably conditioned, withheld or delayed) or as required by applicable law (including for this purpose any COVID-19 Measures (as defined in the Transaction Agreement)), use commercially reasonable efforts to operate the business of the Vivid Seats Companies in the ordinary course.

During the Interim Period, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo have also agreed to, and to cause their respective subsidiaries to, except as expressly contemplated by the Transaction Agreement (including the Pre-Closing Restructuring and the disclosure letter) or the ancillary documents described therein, as consented to by Horizon in writing (which consent will not be unreasonably conditioned, withheld or delayed) or as required by applicable law (including for this purpose any COVID-19 Measures), not to:

- change or amend the governing documents of any Vivid Seats Company in any material respect, except as otherwise required by law;
- make or declare any dividend or distribution to the stockholders or members, as applicable, of any Vivid Seats Company or make any other distributions in respect of any of the Vivid Seats Companies' capital stock or equity interests, except for certain tax distributions and dividends and distributions by a Vivid Seats Company to another Vivid Seats Company;
- split, combine, reclassify, recapitalize or otherwise amend any terms of any shares or series of the Vivid Seats Companies' capital stock or equity interests, except for any such transaction by a Vivid Seats Company that remains a Vivid Seats Company after consummation of such transaction;
- purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, membership interests or other equity interests of the Vivid Seats Companies, except for (i) the acquisition by the Vivid Seats Companies of any shares of capital stock, membership interests or other equity interests of the Vivid Seats Companies (other than Hoya Intermediate) in connection with the forfeiture or cancellation of such interests and (ii) transactions between a Vivid Seats Company and another Vivid Seats Company;

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- sell, assign, transfer, convey, lease, license, sublease, abandon, permit to lapse, mortgage, pledge, encumber or otherwise dispose of any material tangible or intangible assets or properties of the Vivid Seats Companies except for (i) dispositions of obsolete or worthless equipment in the ordinary course of business and (ii) transactions among the Vivid Seats Companies;
- acquire any ownership interest in any real property;
- make an acquisition of (whether by merger, stock or asset purchase or otherwise), capital investment in, or any loan to (or series of acquisitions, capital investments or loans), any other person;
- (i) make or change any material method of accounting for tax purposes, (ii) make, change or revoke any material tax election that is inconsistent with past practices (except as required by the Code or applicable law) if such tax election is reasonably expected to materially increase any tax liability of the Vivid Seats Companies or any direct or indirect owner of Hoya Intermediate in a post-Closing tax period, (iii) enter into any closing agreement relating to material taxes, (iv) settle, concede, compromise or abandon any material tax claim or assessment, (v) surrender any right to claim a material refund of taxes, (vi) consent to any extension or waiver of the statute of limitations applicable to any material tax claim or assessment, or (vii) file any amended income or other material tax return, except as required by applicable law;
- (i) issue any additional Vivid Seats Company interests or securities exercisable for or convertible into Vivid Seats Company interests or (ii) grant any options, warrants or other equity-based awards that relate to the equity of any Vivid Seats Company, in each case other than in the ordinary course of business or issuances to any other Vivid Seats Company;
- adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization, equity split, redemption, purchase of its or any of its subsidiaries' equity interests or other reorganization of the Vivid Seats Companies;
- commence, waive, release, settle, compromise or otherwise resolve any investigation, claim, action, litigation or other legal proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages (i) in an amount less than \$1,000,000 in the aggregate (excluding any amounts paid or payable by an insurance provider) or (ii) that imposed any material non-monetary obligation on Horizon;
- make or commit to make capital expenditures (other than capital expenditures made in the ordinary course of business consistent with past practices) in excess of \$500,000, except for such capital expenditures included in the 2021 budget of the Vivid Seats Companies previously made available to Horizon;
- incur, assume or guarantee any indebtedness or guarantee any indebtedness of another person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of any Vivid Seats Company or guaranty any debt securities of another person, other than any indebtedness for borrowed money or guarantee incurred in the ordinary course of business consistent with past practices and in an aggregate principal amount not to exceed \$5,000,000;
- (i) adopt, establish, enter into, terminate, modify or amend any benefit plan of the Vivid Seats Companies, (ii) other than as such actions may be taken pursuant to the terms of any benefit plan of the Vivid Seats Companies, accelerate the vesting or payment of any compensation or benefits under any such benefit plan, or (iii) recognize any union or employee representative body for purposes of collective bargaining or negotiate or enter into any collective bargaining agreement, works council agreement or other similar contract or understanding with any union, works council or other labor organization other than as required by applicable law;
- (i) pay, announce, promise or grant any increase in the compensation or benefits payable to any current or former director, officer, employee or other individual service provider of any Vivid Seats Company, other than increases in compensation of employees in the ordinary course consistent with past practice or otherwise pursuant to any existing agreement as of the date of this Agreement, or (ii) enter into any

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new employment agreement with any person, or amend the annual base salary of any existing employment agreement with any current or former director, officer, employee or other individual service provider, whose annual base salary would exceed, or exceeded, \$300,000;

- implement or announce any employee layoffs, plant closings, reductions in force, furloughs, temporary layoffs, infectious disease emergency leave, salary or wage reductions, work schedule changes or other such actions that could reasonably be expected to trigger notice or other requirements under the WARN Act;
- terminate (other than for “cause”) any director, officer, employee or other service provider of any Vivid Seats Company whose annual base salary exceeds, or would exceed, \$300,000;
- enter into any Related Party Transaction (as defined in the Transaction Agreement);
- change an annual accounting period for GAAP or adopt or change any material accounting method used by it for GAAP or adopt any material accounting method unless required by GAAP; or
- enter into any contract to take any of the foregoing actions.

Subject to confidentiality obligations that may be applicable to information furnished to Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries by third parties and except for any information that is subject to attorney-client privilege, to the extent permitted by applicable law, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo shall, and shall cause their subsidiaries to, afford Horizon and its accountants, counsel and other representatives reasonable access during the Interim Period, during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries, to their respective properties, books, contracts, commitments, tax returns, records and appropriate officers and employees and furnish such representatives with all financial and operating data and other information concerning the affairs of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries that are in the possession of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries as such representatives may reasonably request; provided, that such access shall not include any Phase II invasive or intrusive investigations, testing, sampling or analysis of any properties, facilities or equipment of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries without the prior written consent of Hoya Topco. All information obtained by Horizon and its representatives shall be subject to the confidentiality agreement with Horizon.

As soon as reasonably practicable following May 14, 2021, Hoya Topco shall deliver to Horizon the unaudited condensed consolidated balance sheet as of March 31, 2021 and statements of operations and comprehensive loss, redeemable preferred units and members’ equity (deficit), and cash flows as of and for the three-month periods ended March 31, 2020 and 2021, for Hoya Topco (or to the extent available, Hoya Intermediate) and its subsidiaries presented in a similar format and fashion as the Audited Financial Statements (subject to normal and recurring year-end adjustments and the absence of footnotes) (the “Q1 Financial Statements”). If the Closing has not occurred prior to August 12, 2021, as soon as reasonably practicable following August 12, 2021, Hoya Topco shall deliver to Horizon the unaudited condensed consolidated balance sheet as of June 30, 2021 and statements of operations and comprehensive loss, redeemable preferred units and members’ equity (deficit), and cash flows as of and for the three- and six-month periods ended June 30, 2020 and 2021 for Hoya Topco (or to the extent available, Hoya Intermediate) and its subsidiaries (subject to normal and recurring year-end adjustments and the absence of footnotes) (the “Q2 Financial Statements”). If the Closing has not occurred prior to November 12, 2021, as soon as reasonably practicable following November 12, 2021, Hoya Topco shall deliver to Horizon the unaudited condensed consolidated balance sheet as of September 30, 2021 and statements of operations and comprehensive loss, redeemable preferred units and members’ equity (deficit), and cash flows as of and for the three- and nine-month periods ended September 30, 2020 and 2021 for Hoya Topco (or to the extent available, Hoya Intermediate) and its subsidiaries (subject to normal and recurring year-end adjustments and the absence of footnotes) (the “Q3 Financial Statements”).



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Hoya Topco, Hoya Intermediate and Vivid Seats PubCo shall, or cause its and their subsidiaries to, take all actions as are necessary so that the Pre-Closing Restructuring shall be consummated prior to the Closing.

During the Interim Period, Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries shall not, and shall instruct and use their respective reasonable best efforts to cause their respective representatives not to (i) initiate any negotiations with any person with respect to, or provide any non-public information or data concerning Hoya Topco, Hoya Intermediate, Vivid Seats PubCo or any of their respective subsidiaries to any person relating to, an acquisition proposal or afford to any person access to the business, properties, assets or personnel of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo or any of their respective subsidiaries in connection with an acquisition proposal, (ii) enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an acquisition proposal, (iii) grant any waiver, amendment or release under any confidentiality agreement or the anti-takeover laws of any state with respect to an acquisition proposal, or (iv) otherwise knowingly facilitate any such inquiries, proposals, discussions, or negotiations or any effort or attempt by any person to make an acquisition proposal. Notwithstanding anything to the contrary in the Transaction Agreement, Hoya Topco, Hoya Intermediate, Vivid Seats PubCo and their respective subsidiaries and their respective representatives shall not be restricted pursuant to the foregoing sentence with respect to any actions taken in connection with (1) the Pre-Closing Restructuring and (2) the arrangement of financing in order to facilitate the consummation of the business combination or for the financing of Vivid Seats following the Closing.

Subject to the terms of the Stockholders' Agreement and the governing documents of Vivid Seats PubCo, Vivid Seats PubCo shall take all such action within its power as may be necessary or appropriate such that immediately following the Closing:

- the Vivid Seats Board shall consist of nine (9) directors, (i) one (1) of which shall be the chief executive officer of Vivid Seats PubCo, (ii) five (5) of which shall be designated by Hoya Topco and/or its affiliates, one (1) of which shall qualify as an "independent director" under stock exchange regulations applicable to Vivid Seats PubCo and (iii) three (3) of which shall be designated by Sponsor, two (2) of which shall qualify as an "independent director" under stock exchange regulations applicable to Vivid Seats PubCo;
- the chairperson of the Vivid Seats Board shall be designated by Hoya Topco and shall serve in such capacity in accordance with the terms of the Stockholders' Agreement and the Vivid Seats PubCo governing documents following the Closing; and
- the initial officers of Vivid Seats PubCo will be as set forth in the disclosure letter of the Vivid Seats Companies, who will serve in such capacity in accordance with the terms of the governing documents of Vivid Seats PubCo following the Closing.

After the Closing, Vivid Seats PubCo agrees to indemnify and hold harmless each present and former director and officer of the Vivid Seats Companies (in each case, solely to the extent acting in their capacity as such and to the extent such activities are related to the business of the Vivid Seats Companies) and Horizon and each of its subsidiaries against any costs, expenses, damages or liabilities incurred in connection with any legal proceeding, to the fullest extent that would have been permitted under applicable law and the applicable governing documents to indemnify such person.

Vivid Seats PubCo will maintain for a period of not less than six (6) years from the Closing a directors' and officers' liability insurance policy covering those persons who are currently covered by Horizon's, the Vivid Seats Companies' or their subsidiaries' directors' and officers' liability insurance policies on terms not less favorable than the terms of such current insurance coverage, except that in no event will Vivid Seats PubCo be required to pay an annual premium for such insurance in excess of 300% of the aggregate annual premium payable by Horizon or the Vivid Seats Companies for such insurance policy for the year ended December 31, 2020.



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On the Closing Date, Vivid Seats PubCo will enter into customary indemnification agreements reasonably satisfactory to Horizon and Hoya Topco with the post-Closing directors and officers of Vivid Seats PubCo, which indemnification agreements will continue to be effective following the Closing.

Hoya Topco, Hoya Intermediate and Vivid Seats PubCo will each, and will each cause their respective subsidiaries to use reasonable best efforts to take such action as may be reasonably necessary or as another party to the Transaction Agreement may reasonably request to satisfy the conditions to Closing or otherwise to comply with the Transaction Agreement and to consummate the business combination as soon as practicable, subject to certain exceptions.

Immediately prior to the Effective Time, Vivid Seats PubCo will amend and restate its certificate of incorporation and bylaws to be in the form of the Vivid Seats Amended and Restated Charter and Vivid Seats Amended and Restated Bylaws, respectively.

Prior to the Closing Date, Vivid Seats PubCo shall approve and adopt the 2021 Plan and the 2021 ESPP.

### *Covenants of Horizon*

Horizon made certain covenants under the Transaction Agreement, including, among others, the following:

During the Interim Period, Horizon has agreed that it will, and will cause its subsidiaries to, except as otherwise contemplated by the Transaction Agreement or the ancillary agreements referenced therein, as consented to by Hoya Topco in writing (which consent will not be unreasonably conditioned, withheld or delayed) or as required by applicable law (including for this purpose any COVID-19 Measures), operate its business in the ordinary course and consistent with past practice.

During the Interim Period, Horizon has also agreed to, and to cause its subsidiaries to, except as expressly contemplated by the Transaction Agreement, as consented to by Hoya Topco in writing (which consent will not be unreasonably conditioned, withheld or delayed) or as required by applicable law (including for this purpose any COVID-19 Measures), not to:

- seek any approval from the Horizon shareholders to change, modify or amend the Trust Agreement or Horizon's governing documents, except as contemplated by the Proposals;
- (i) make or declare any dividend or distribution to the shareholders of Horizon or make any other distributions in respect of any of Horizon's or any of its subsidiaries' capital stock, share capital or equity interests, (ii) split, combine, reclassify or otherwise amend any terms of any shares or series of Horizon's or any of its subsidiaries' capital stock or equity interests or (iii) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Horizon or any of its subsidiaries, other than a redemption of Horizon common stock (prior to the Effective Time) made as part of the Horizon Share Redemptions;
- (i) make or change any material method of accounting for tax purposes, (ii) make, change or revoke any material tax election that is inconsistent with past practices (except as required by the Code or applicable law), (iii) enter into any closing agreement relating to material taxes, (iv) settle, concede, compromise or abandon any material tax claim or assessment, (v) surrender any right to claim a material refund of taxes, (vi) consent to any extension or waiver of the statute of limitations applicable to any material tax claim or assessment or (vii) file any amended income or other material tax return except as required by applicable law;
- other than as expressly required by the Sponsor Agreement, enter into, renew or amend in any material respect, any transaction or contract with an affiliate of Horizon or any of its subsidiaries (including, for the avoidance of doubt, (x) Sponsor and (y) any person in which Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

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- incur or assume any indebtedness or guarantee any indebtedness of another person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Horizon or any of its subsidiaries or guaranty any debt securities of another person, other than any indebtedness for borrowed money or guarantee incurred in the ordinary course of business necessary to finance its ordinary course administrative costs and expenses and transaction expenses incurred in connection with the business combination in an aggregate principal amount not to exceed \$1,000,000;
- incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any material liabilities, debts or obligations, other than Indebtedness permitted to be incurred pursuant to the immediately foregoing clause and other fees and expenses for professional services incurred in the ordinary course in support of the business combination;
- (i) issue any Horizon ordinary shares or securities exercisable for or convertible into Horizon ordinary shares, other than the issuance of Horizon ordinary shares pursuant to the Transaction Agreement, (ii) grant any options, warrants or other equity-based awards with respect to Horizon ordinary shares not outstanding as of the date of the Transaction Agreement or (iii) amend, modify or waive any of the material terms or rights set forth in any Horizon Warrant or the Existing Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein;
- change an annual accounting period for GAAP or adopt or change any material accounting method used by it for GAAP or adopt any material accounting method unless required by GAAP;
- acquire any ownership interest in any real property;
- acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;
- except as reasonably necessary to consummate the business combination, enter into, renew, modify or revise any contract; or
- enter into any contract to do any action prohibited under the foregoing. In connection with satisfying the condition to meet the Minimum Available Horizon Cash Amount, Horizon shall reasonably cooperate with and take all actions reasonably required to meet the condition, including, without limitation, by issuing additional shares of Horizon ordinary shares.

In connection with satisfying the condition to meet the Minimum Available Horizon Cash Amount, Horizon shall reasonably cooperate with and take all actions reasonably required to meet the condition, including, without limitation, by issuing additional shares of Horizon ordinary shares.

During the Interim Period, Horizon shall ensure it remains listed as a public company on NYSE. Prior to the Closing, Vivid Seats PubCo shall prepare and submit to Nasdaq a listing application covering the Vivid Seats Class A common stock issuable in the Merger and the PIPE Subscriptions, and shall obtain approval for the listing of such Vivid Seats Class A common stock and the parties shall reasonably cooperate with respect to such listing. Vivid Seats PubCo will use reasonable best efforts, in consultation with Horizon, to cause the shares of Vivid Seats Class A common stock into which the Intermediate Common Units are redeemable under the Second A&R LLCA, and will use reasonable best efforts to cause the Vivid Seats Public IPO Warrants, in each case, to be approved for listing on Nasdaq.

During the Interim Period, Horizon shall not, and shall cause its subsidiaries not to, and Horizon shall instruct its and their representatives not to, (i) make any proposal or offer that constitutes a business combination proposal, (ii) initiate any discussions or negotiations with any person with respect to a business combination proposal or (iii) enter into any acquisition agreement, business combination, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a business combination proposal, in each case, other than to or with Hoya Topco, its

subsidiaries and their respective representatives. From and after the date of the Transaction Agreement, Horizon shall, and shall instruct its officers and directors to, and Horizon shall instruct and cause its representatives to, immediately cease and terminate all discussions and negotiations with any persons that may be ongoing with respect to a business combination proposal (other than Hoya Topco, its subsidiaries and their respective representatives).

During the Interim Period, Horizon will keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable laws.

Unless otherwise approved in writing by Hoya Topco, Horizon will not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to termination), any provision or remedy under, or any replacements of, any of the Subscription Agreements. Subject to the immediately preceding sentence, Horizon will use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by the Subscription Agreements in all material respects.

Horizon will, and will cause its subsidiaries to, take such other action as may be reasonably necessary or as another party to the Transaction Agreement may reasonably request to satisfy the conditions to Closing or otherwise to comply with the Transaction Agreement and to consummate the business combination as soon as practicable.

Horizon will use commercially reasonable efforts to revise the terms of the Horizon Warrants such that the Horizon Warrants are treated as equity under the rules and guidelines of the SEC at and after the Closing, including using commercially reasonable efforts to obtain any shareholder or warrant holder approvals if necessary to accomplish the foregoing. For the avoidance of doubt, the Sponsor shall support Horizon in taking the foregoing actions, including voting its Horizon ordinary shares and Horizon Warrants in favor of any such changes if such a vote is required.

#### *Mutual Covenants*

Each party made certain mutual covenants under the Transaction Agreement, including, among others, the following:

Horizon shall cooperate in good faith with Hoya Topco, Hoya Intermediate and Vivid Seats PubCo and any governmental authority and undertake (and not waive its rights under the Subscription Agreements with respect to the PIPE Investors' obligations with respect to Regulatory Approvals (as defined in the Transaction Agreement)) promptly any and all action required to satisfy the Regulatory Approvals and complete lawfully the business combination as soon as practicable (but in any event prior to the Agreement End Date) and any and all action necessary or advisable to (x) consummate the business combination and (y) avoid, prevent, eliminate or remove any actual or threatened commencement of a governmental order from any governmental authority that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the business combination, including, among other things, and with Hoya Topco's written consent, restructuring the terms of the business combination or consenting to a governmental order providing for the sale of assets or lines of business of the Vivid Seats Companies or Horizon.

Horizon will (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary clearance, approval, consent or governmental authorization under any applicable laws prescribed or enforceable by any governmental authority for the business combination and to resolve any objections as may be asserted by any governmental authority with respect to the business combination and (ii) cooperate fully with each other in the defense of such matters.

Each of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo will use its reasonable best efforts to cause the proxy statement/registration statement to comply with the rules and regulations promulgated by the SEC, to have the registration statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the registration statement effective as long as is necessary to consummate the business combination, and to obtain all necessary state securities law or “Blue Sky” permits and approvals required to carry out the business combination.

Horizon will as promptly as practicable after the proxy statement/registration statement is declared effective under the Securities Act, (i) disseminate the proxy statement to shareholders of Horizon, (ii) call and give notice of and convene and hold a meeting of its shareholders to vote on the Proposals, in each case, in accordance with its governing documents then in effect and the applicable NYSE Listing Rules for a date no later than 30 business days following the date the registration statement is declared effective, (iii) solicit proxies from the holders of Horizon ordinary shares to vote in favor of each of the Proposals and (iv) provide its shareholders with the opportunity to elect to effect a Horizon Share Redemption.

Hoya Intermediate shall take all actions necessary or advisable to ensure that Hoya Intermediate (and, to the extent provided for in the Tax Receivable Agreement, any of its subsidiaries that is treated as a partnership for applicable tax purposes) will have made a valid election pursuant to Section 754 of the Code (and elections available under similar provisions of state or local Law) that is effective for the taxable period that includes the Closing Date. Unless otherwise required by applicable law, with respect to any such matter that could reasonably be expected to result in any tax liability for which Hoya Topco, Hoya Intermediate or any of their beneficial owners could be responsible, without the prior written consent of Hoya Topco (not to be unreasonably withheld, conditioned or delayed), Vivid Seats PubCo shall not, and shall not permit any of its affiliates to file, re-file, or amend any flow-thru tax return of the Vivid Seats Companies with respect to any pre-closing tax period, or make any election that would have retroactive effect with respect to a pre-closing tax period. For purposes of determining the U.S. federal (and applicable state and local) income tax consequences of the business combination, the parties agree to use any reasonable allocation of values among the assets of the Vivid Seats Companies that is selected by Hoya Topco and Vivid Seats PubCo in good faith. Horizon, Vivid Seats PubCo, Hoya Topco and Hoya Intermediate shall reasonably cooperate, and shall cause their respective affiliates to reasonably cooperate, in connection with the preparation and filing of tax returns and any audit, examination, or other legal proceeding regarding taxes with respect to any pre-Closing tax period of the Vivid Seats Companies.

All transfer taxes in connection with the Transaction Agreement shall be borne and paid by Hoya Intermediate.

Each of Horizon, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo shall take all such steps as may be required (to the extent permitted under applicable law) to cause any dispositions of the equity interests of Horizon or the equity interests of the Vivid Seats Companies or acquisitions of Vivid Seats PubCo common stock or warrants (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the business combination by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the business combination to be exempt under Rule 16b-3 promulgated under the Exchange Act.

#### **Survival of Representations, Warranties and Covenants**

Except for certain covenants to be performed following the closing, the representations, warranties and covenants of the parties contained in the Transaction Agreement will not survive the Closing.

## Termination

The Transaction Agreement may be terminated prior to the Closing, as follows:

- by mutual written consent of Hoya Topco and Horizon;
- by written notice from Hoya Topco or Horizon to the other if any governmental order has become final and nonappealable which has the effect of making consummation of the business combination illegal or otherwise preventing or prohibiting the consummation of the business combination;
- by written notice from Hoya Topco to Horizon if the Horizon Shareholder Approval will not have been obtained by reason of the failure to obtain the required vote at the Horizon Shareholders' Meeting duly convened therefor or at any adjournment thereof;
- by written notice from Hoya Topco to Horizon after there has been a modification in recommendation of the board of directors of Horizon with respect to any of the Proposals;
- prior to the Closing, by written notice to Hoya Topco from Horizon in the event of certain uncured breaches on the part of Hoya Topco, Hoya Intermediate or Vivid Seats PubCo or if the Closing has not occurred on or before October 21, 2021, unless Horizon is then in material breach of the Transaction Agreement; or
- prior to the Closing, by written notice to Horizon from Hoya Topco in the event of certain uncured breaches on the part of Horizon or if the Closing has not occurred on or before October 21, 2021, unless any of Hoya Topco, Hoya Intermediate or Vivid Seats PubCo is then in material breach of the Transaction Agreement.

In the event of the termination of the Transaction Agreement, the Transaction Agreement will become void and have no effect other than with respect to certain exceptions contemplated by the Transaction Agreement (including the terms of the confidentiality agreement with Horizon) that will survive any termination of the Transaction Agreement, and there will be no liability on the part of any party thereto or its respective affiliates, officers, directors or stockholders, other than liability of Hoya Topco, Hoya Intermediate, Vivid Seats PubCo or Horizon, as the case may be, for any fraud or willful and material breach of the Transaction Agreement occurring prior to such termination.

## Amendments

The Transaction Agreement may not be amended except by an instrument in writing executed in the same manner as the Transaction Agreement.

## Related Agreements

*This section describes the material provisions of certain additional agreements entered into or to be entered into pursuant to the Transaction Agreement at the Closing, which are referred to as the "Related Agreements," but does not purport to describe all of the terms thereof. The full text of the Related Agreements, or forms thereof, are filed as annexes to this proxy statement/prospectus/consent solicitation statement or as exhibits to the registration statement of which this proxy statement/prospectus/consent solicitation statement forms a part, and the following descriptions are qualified in their entirety by the full text of such annexes and exhibits. Stockholders and other interested parties are urged to read such Related Agreements in their entirety.*

## Vivid Seats PubCo Amended and Restated Charter

Pursuant to the terms of the Transaction Agreement, the Vivid Seats PubCo Amended and Restated Charter will be the certificate of incorporation of Vivid Seats PubCo following the Closing, which will, among other

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things, provide for three classes of stock, the Vivid Seats Class A common stock, which will be issued to Sponsor, the PIPE Investors and the other public shareholders of Vivid Seats PubCo in connection with the Closing, the Vivid Seats Class B common stock, which will be issued to Hoya Topco in connection with the Class B Issuance and preferred stock, none of which will be outstanding immediately following the Closing.

### **Common Stock**

#### *Voting.*

Except as otherwise required by the Vivid Seats PubCo Amended and Restated Charter, holders of Vivid Seats Class A common stock and Vivid Seats Class B common stock will vote together as a single class on all matters on which stockholders are generally entitled to vote. Each holder of Vivid Seats Class A common stock will be entitled to one vote per share and each holder of Vivid Seats Class B common stock will be entitled to one vote per share. Pursuant to the Vivid Seats PubCo Amended and Restated Charter, the holders of the outstanding shares of Vivid Seats Class A common stock and Vivid Seats Class B common stock shall be entitled to vote separately as a class upon any amendment to the Vivid Seats PubCo Amended and Restated Charter (including by merger, consolidation, reorganization or similar event or otherwise) that would alter or change the powers, preferences, or special rights of a class of stock so as to affect them adversely.

Following the Closing, Hoya Topco will control approximately 60.6% of the combined voting power of Vivid Seats PubCo's common stock as a result of its ownership of all of the shares of Vivid Seats Class B common stock. Accordingly, Private Equity Owner, through its control of Hoya Topco, will control Vivid Seats PubCo's business policies and affairs and can control any action requiring the general approval of its stockholders.

#### *Dividends.*

The holders of Vivid Seats Class A common stock are entitled to receive dividends, as and if declared by the Vivid Seats Board out of the assets of Vivid Seats PubCo that are by law available for such use. Dividends shall not be declared or paid on the Vivid Seats Class B common stock.

#### *Liquidation or Dissolution.*

Upon Vivid Seats PubCo's liquidation, dissolution or winding up of the affairs of Vivid Seats PubCo, after payment or provision for payment of the debts and other liabilities of Vivid Seats PubCo as required by law 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 Vivid Seats Class A common stock will be entitled to receive the remaining assets of Vivid Seats PubCo available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Vivid Seats Class B common stock shall not be entitled to receive any assets of Vivid Seats PubCo in the event of any such liquidation, dissolution or winding up the affairs of Vivid Seats PubCo.

#### *Redemption Rights.*

Vivid Seats PubCo will at all times reserve and keep available out of its authorized and unissued shares of Vivid Seats Class A common stock, for the purposes of effecting any redemptions or exchanges pursuant to the applicable provisions of Article IX of the Second A&R LLCA, the number of shares of Vivid Seats Class A common stock that are issuable in connection with the redemption or exchange of all outstanding Intermediate Common Units as a result of any Redemption or Direct Exchange (each as defined in the Second A&R LLCA) pursuant to the applicable provisions of Article IX of the Second A&R LLCA, as applicable. In the event that (a) a share of Vivid Seats Class A common stock is issued as a result of any Redemption or Direct Exchange of an Intermediate Common Unit pursuant to the applicable provisions of Article IX of the Second A&R LLCA or

(b) a Redemption by Cash Payment (as defined in the Second A&R LLCA) is effected with respect to any Intermediate Common Units pursuant to the applicable provisions of Article IX of the Second A&R LLCA, a share of Vivid Seats Class B common stock held by such unitholder chosen by Vivid Seats PubCo in its sole discretion will automatically and without further action on the part of Vivid Seats PubCo or the holder thereof be transferred to Vivid Seats PubCo for no consideration and thereupon shall automatically be retired and cease to exist, and such share thereafter may not be reissued by Vivid Seats PubCo.

#### *Other Provisions*

None of the Vivid Seats Class A common stock and Vivid Seats Class B common stock has any pre-emptive or other subscription rights.

#### ***Preferred Stock***

Vivid Seats PubCo is authorized to issue up to 50,000,000 shares of preferred stock. The Vivid Seats Board is authorized, subject to limitations prescribed by law, to provide for the issuance of shares of preferred stock in one or more series, and with respect to each series, to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other special rights, if any, of the shares of each such series, and any qualifications, limitations or restrictions thereof. The powers (including voting powers), preferences, and relative, participating, optional and other special rights of each series of preferred stock and the qualifications, limitations or restrictions thereof, if any, may differ from those of any other series at any time outstanding. Subject to the rights of the holders of any series of preferred stock, the number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares of preferred stock then outstanding) by the approval of the Vivid Seats Board and by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of Vivid Seats PubCo entitled to vote generally in an election of directors, without the separate vote of the holders of the preferred stock as a class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

#### ***Corporate Opportunity***

The Vivid Seats PubCo Amended and Restated Charter will provide that, to the fullest extent permitted by law, (a) Vivid Seats PubCo renounces any interest or expectancy in a transaction or matter that may be a corporate opportunity for Vivid Seats PubCo and (b) the Private Equity Owner and/or its affiliated companies or Sponsor and/or its affiliates companies and/or their respective directors, members, managers and/or employees have no duty to present such corporate opportunity to Vivid Seats PubCo.

#### ***Anti-Takeover Effects of the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws***

The provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws and of the DGCL summarized below may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that you might consider in your best interest, including an attempt that might result in your receipt of a premium over the market price for your shares of Vivid Seats Class A common stock.

The Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will contain certain provisions that are intended to enhance the likelihood of continuity and stability in the composition of the Vivid Seats Board and that may have the effect of delaying, deferring or preventing a future takeover or change in control of Vivid Seats PubCo unless such takeover or change in control is approved by the Vivid Seats Board.

These provisions include:

- *Action by Written Consent; Special Meetings of Stockholders.* The Vivid Seats PubCo Amended and Restated Charter will provide that, following the time Private Equity Owner and its affiliated companies cease to beneficially own in the aggregate fifty percent (50%) of the voting control of Vivid Seats PubCo, 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. The Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will also provide that, subject to any special rights of the holders of any series of preferred stock and except as otherwise required by law, special meetings of stockholders of Vivid Seats PubCo may be called only (i) by or at the direction of the Vivid Seats Board or the chair of the Vivid Seats Board pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that Vivid Seats PubCo would have if there were no vacancies or (ii) prior to the date on which Private Equity Owner and its affiliated companies cease to beneficially own at least thirty percent (30%) of the voting control of Vivid Seats PubCo, by the chair of the Vivid Seats Board at the written request of the holders of a majority of the voting power of the then outstanding shares of voting stock in the manner provided for in the Vivid Seats PubCo Amended and Restated Bylaws.
- *Advance Notice Procedures.* The Vivid Seats PubCo Amended and Restated Bylaws will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of Vivid Seats PubCo's stockholders, and for stockholder nominations of persons for election to the board of directors to be brought before an annual or special meeting of stockholders. 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 Vivid Seats PubCo's Secretary timely written notice, in proper form, of the stockholder's intention to bring that business or nomination before the meeting. Although the Vivid Seats PubCo Amended and Restated Bylaws will not give the Vivid Seats Board the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, as applicable, the Vivid Seats PubCo Amended and Restated 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 Vivid Seats PubCo.
- *Authorized but Unissued Shares.* Vivid Seats PubCo's authorized but unissued shares of Vivid Seats Class A common stock and preferred stock will be available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of Vivid Seats Class A common stock and preferred stock could render more difficult or discourage an attempt to obtain control of a majority of Vivid Seats PubCo Class A common stock by means of a proxy contest, tender offer, merger or otherwise.
- *Business Combinations with Interested Stockholders.* The Vivid Seats PubCo Amended and Restated Charter will provide that Vivid Seats PubCo is not subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with an "interested stockholder" (which includes a person or group owning 15% or more of the corporation's voting stock) for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Accordingly, Vivid Seats PubCo is not subject to any anti-takeover effects of Section 203. Nevertheless, the Vivid Seats PubCo Amended and Restated Charter will contain provisions that will have a similar effect to Section 203, except that they will provide that Sponsor, Hoya Topco, and the Private Equity Owner, and their respective affiliates and successors and their



direct and indirect transferees will not be deemed to be “interested stockholders,” regardless of the percentage of Vivid Seats PubCo’s voting stock owned by them, and accordingly will not be subject to such restrictions.

- *Director Designees; Classes of Directors.* Pursuant to the Vivid Seats PubCo Amended and Restated Charter, the directors of the Vivid Seats Board are divided into three classes, with each class serving staggered three year terms. The existence of a classified board of directors could discourage a third party from making a tender offer or otherwise attempting to obtain control of Vivid Seats PubCo as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.
- *No Cumulative Voting for Directors.* The DGCL provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation’s certificate of incorporation provides otherwise. The Vivid Seats PubCo Amended and Restated Charter does not provide for cumulative voting. As a result, the holders of shares of Vivid Seats PubCo common stock representing a majority of the voting power of all of the outstanding shares of capital stock of Vivid Seats PubCo will be able to elect all of the directors then standing for election.
- *Restriction on Issuance of Vivid Seats Class B Common Stock.* No shares of Vivid Seats Class B common stock may be issued by Vivid Seats PubCo except to a holder of Intermediate Common Units, such that after such issuance the holder of shares of Vivid Seats Class B common stock holds an identical number of Intermediate Common Units and shares of Vivid Seats Class B common stock. Following the Closing, the Intermediate Common Units will be held by Vivid Seats PubCo and Hoya Topco and such Intermediate Common Units will be subject to transfer restrictions set forth in the Second A&R LLCA. The restriction on issuance of Vivid Seats Class B common stock and the restriction on transfer of Intermediate Common Units could make it more difficult for a third party to obtain control of us from Hoya Topco, which will control Vivid Seats PubCo’s business policies and affairs and will control any action requiring the general approval of stockholders by virtue of its ownership of all outstanding Vivid Seats Class B common stock.

### **Choice of Forum**

The proposed Vivid Seats PubCo Amended and Restated Charter provides that, to the fullest extent permitted by law, and unless Vivid Seats PubCo consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Vivid Seats PubCo, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of Vivid Seats PubCo’s directors, officers, employees or stockholders to Vivid Seats PubCo or its stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Vivid Seats PubCo Amended and Restated Charter or Vivid Seats PubCo Amended and Restated Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine. The Vivid Seats PubCo Amended and Restated Charter will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. There is uncertainty as to whether a court would enforce such a provision relating to causes of action arising under the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. The clauses described above will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

### **Directors’ Liability; Indemnification of Directors and Officers**

The Vivid Seats PubCo Amended and Restated Charter will limit the liability of the Vivid Seats PubCo directors to the fullest extent permitted by the DGCL and provides that Vivid Seats PubCo will provide them with customary indemnification and advancement of expenses. Vivid Seats PubCo expects to enter into customary indemnification agreements with each of its executive officers and directors that provide them, in general, with customary indemnification in connection with their service to Vivid Seats PubCo or on its behalf.

## **Second A&R LLCA**

The amended and restated limited liability company agreement of Hoya Intermediate will be amended and restated prior to the Closing in the form of the Second A&R LLCA, which shall be the limited liability company agreement of Hoya Intermediate immediately following the Closing.

### ***Management***

Pursuant to the Second A&R LLCA, Hoya Intermediate will be managed by a board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco. For each matter presented to the board of managers of Hoya Intermediate, the Vivid Seats PubCo designee will be entitled to two (2) votes and the Hoya Topco designee will be entitled to one (1) vote.

### ***Capitalization***

In connection with the Intermediate Merger, Hoya Intermediate will recapitalize its existing Intermediate Common Units and Intermediate Senior Preferred Units such that each existing Intermediate Common Unit will be converted into a set number of new Intermediate Common Units and each existing Intermediate Senior Preferred Unit will be cancelled and cease to exist for no consideration. Hoya Intermediate will have the authority to issue an unlimited number of Intermediate Common Units. In connection with the business combination and subject to the terms and conditions of the Transaction Agreement, Hoya Intermediate will issue Intermediate Common Units and warrants to purchase Intermediate Common Units (the “Hoya Intermediate Warrants”) to Vivid Seats PubCo in exchange for a cash contribution to Hoya Intermediate, such that immediately after completion of the business combination and the issuance of Intermediate Common Units and Hoya Intermediate Warrants by Hoya Intermediate, the total number of Intermediate Common Units held by Vivid Seats PubCo will equal the total number of outstanding shares of Vivid Seats Class A common stock and the total number of Intermediate Common Units into which Hoya Intermediate Warrants held by Vivid Seats PubCo are exercisable will be equal to the total number of shares of Vivid Seats Class A common stock for which outstanding warrants issued by Vivid Seats PubCo are exercisable.

In connection with the business combination, Hoya Intermediate will issue Hoya Intermediate Warrants to Vivid Seats PubCo and Hoya Topco. Upon the valid exercise of a Hoya Intermediate Warrant by Vivid Seats PubCo in accordance with the applicable warrant agreement, Hoya Intermediate will issue to Vivid Seats PubCo the number of Intermediate Common Units to be issued in connection with such exercise. If any holder of a warrant issued by Vivid Seats PubCo to purchase shares of Vivid Seats Class A common stock (the “Upstairs Class A Warrants”) exercises an Upstairs Class A Warrant, then Vivid Seats PubCo will cause a corresponding exercise of a Hoya Intermediate Warrant with similar terms held by it, such that the number of shares of Vivid Seats Class A common stock issued in connection with the exercise of such Upstairs Class A Warrant shall match with a corresponding number of Intermediate Common Units issued by Hoya Intermediate. Vivid Seats PubCo further agrees that it will not exercise any Hoya Intermediate Warrants other than in connection with the corresponding exercise of an Upstairs Class A Warrant. Upon the valid exercise of a Hoya Intermediate Warrant by Hoya Topco, then Hoya Topco will cause a corresponding exercise of a warrant issued by Vivid Seats PubCo to purchase shares of Vivid Seats Class B common stock (the “Upstairs Class B Warrants”) held by it, such that the number of Intermediate Common Units issued by Hoya Intermediate pursuant to the applicable warrant agreement with Hoya Topco will match a corresponding number of shares of Vivid Seats Class B common stock issued in connection with the exercise of such Upstairs Class B Warrant. Hoya Topco further agrees that it will not exercise any Upstairs Class B Warrants other than in connection with the corresponding exercise of a Hoya Intermediate Warrant.

### ***Additional Units; Repurchase or Redemption of Vivid Seats Class A Common Stock***

The board of managers will have the right to cause Hoya Intermediate to issue and/or create additional equity securities of Hoya Intermediate. Except for certain exceptions, at any time Vivid Seats PubCo issues

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shares of Vivid Seats Class A common stock, Vivid Seats PubCo shall contribute to Hoya Intermediate all of the net proceeds (if any) received by Vivid Seats PubCo with respect to such shares of Vivid Seats Class A common stock. Upon the contribution by Vivid Seats PubCo to Hoya Intermediate of all of such net proceeds received by Vivid Seats PubCo, Hoya Intermediate will issue a number of Intermediate Common Units determined based upon the Exchange Rate (as defined in the Second A&R LLCA) then in effect to Vivid Seats PubCo.

If, at any time, any shares of Vivid Seats Class A common stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by Vivid Seats PubCo for cash, then the board of managers shall cause Hoya Intermediate, immediately prior to such repurchase or redemption of such shares, to redeem a corresponding number of Intermediate Common Units held by Vivid Seats PubCo (determined based upon the Exchange Rate then in effect), at an aggregate redemption price equal to the aggregate purchase or redemption price of the share or shares of Vivid Seats Class A common stock being repurchased or redeemed by Vivid Seats PubCo (plus any reasonable expenses related thereto) and upon such other terms as are the same for the share or shares of Vivid Seats Class A common stock being repurchased or redeemed by Vivid Seats PubCo.

### ***Distributions***

Other than with respect to tax distributions, the board of managers may make distributions at such time, in such amounts and in such form (including in kind property) as determined by the board of managers, in each case to the holders of Intermediate Common Units immediately prior to such distribution on a pro rata basis and in accordance with each unitholder's Pro Rata Share (as defined in the Second A&R LLCA).

### ***Liability; Indemnification***

The Second A&R LLCA will limit the liability of the members and unitholders of Hoya Intermediate and the officers, directors and managers of Vivid Seats PubCo, Hoya Intermediate and each of their subsidiaries to the fullest extent permitted by the DGCL and provides that Hoya Intermediate will provide them with customary indemnification and advancement of expenses.

### **Exchange Agreement**

Pursuant to the terms of the Exchange Agreement, and effective at least one day prior to the Merger, Sponsor will irrevocably tender to Horizon all of its Horizon Class B ordinary shares for cancellation in exchange for the Horizon \$10.00 Exercise Warrants, the Horizon \$15.00 Exercise Warrants and 50,000 shares of Horizon Class A ordinary shares in the Exchange. The Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants shall be issued to Sponsor on terms substantially similar to the terms of the Form of New Warrant Agreement and with such other changes to be mutually agreed upon by Horizon, Sponsor and Hoya Topco, including that, the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants (i) will have an exercise price of \$10.00 per share and \$15.00 per share, respectively, (ii) will each have a term of ten (10) years, (iii) will not be redeemable by Horizon and (iv) will be fully transferrable, except for any contractual restrictions on transfer set forth in the Stockholders' Agreement and the Sponsor Agreement.

### **Crescent Purchase Agreement**

Pursuant to the terms of the Crescent Purchase Agreement, certain actions will be taken with respect to the equity interests of Hoya Topco and Hoya Intermediate held by the Crescent Holders.

Such actions will include, among others, the following:

- Prior to the Closing, Hoya Topco will redeem 100% of the Class A Units of Hoya Topco held by the Crescent Holders (other than the Crescent Blockers) in exchange for 100% of the Senior Preferred Units of Hoya Intermediate in the Class A Redemption.

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- Immediately following the Class A Redemption, Hoya Topco will form a new wholly owned subsidiary and Delaware limited liability company, which will merge with and into Hoya Intermediate in the Intermediate Merger, pursuant to which, among other things, each Senior Preferred Unit of Hoya Intermediate outstanding immediately prior to the effective time of the Intermediate Merger will be converted into Intermediate Common Units.
- At the Closing and immediately following the effectiveness of the Second A&R LLCA, Vivid Seats PubCo will purchase the Crescent Blocker Shares in exchange for the Blocker Purchase Price applicable to such Crescent Blocker in the Blocker Purchase.
- At the Closing and immediately following the effectiveness of the Second A&R LLCA and the Intermediate Contribution and Issuance, Hoya Intermediate will redeem 100% of the Intermediate Common Units held by the Crescent Holders (other than the Crescent Blockers) in exchange for the Redemption Price (as defined in the Crescent Purchase Agreement) in the Crescent Redemption.

### **Registration Rights Agreement**

At the Closing, Vivid Seats PubCo, Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement, dated as of August 25, 2020, by and between Horizon and the Sponsor. Pursuant to the Registration Rights Agreement, Vivid Seats PubCo will agree to file a registration statement for a shelf registration on Form S-1 or Form S-3 within 30 days following Closing and the Sponsor and Hoya Topco will be granted certain customary registration rights with respect to the securities of Vivid Seats PubCo.

### **Stockholders' Agreement**

At the Closing, Vivid Seats PubCo will enter into a Stockholders' Agreement with Sponsor and Hoya Topco, which will govern certain rights granted to Sponsor and Hoya Topco (and their respective affiliates) and restrictions on the Vivid Seats PubCo common stock held by each of Hoya Topco and Sponsor.

### ***Board Composition; Chairperson of the Board***

The Topco Equityholders will have the right to designate five (5) directors for election to the Vivid Seats Board and the Horizon Equityholders will have the right to designate three (3) directors for election to the Vivid Seats Board. From the Closing Date, the Horizon Equityholders will have the right to nominate (a) three (3) directors to the Vivid Seats Board, so long as the Horizon Equityholders, in the aggregate, beneficially own at least 12% of the aggregate number of shares of Vivid Seats PubCo common stock that are issued and outstanding on the Closing Date (the "Closing Amount"), of which at least two (2) will qualify as "independent directors" under applicable stock exchange regulations, (b) two (2) directors to the Vivid Seats Board, so long as the Horizon Equityholders, in the aggregate, beneficially own at least 6% but less than 12% of the Closing Amount, each of which shall qualify as "independent directors" under applicable stock exchange regulations, and (c) until the date the Horizon Equityholders, in the aggregate, beneficially own a number of voting stock representing less than five percent (5%) of the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Horizon Equityholders on the Closing Date, one (1) director to the Vivid Seats Board, who shall qualify as an "independent director" under applicable stock exchange regulations. From the Closing Date, the Topco Equityholders will have the right to nominate (i) five (5) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 24% of the Closing Amount, of which at least one (1) will qualify as an "independent director" under applicable stock exchange regulations, (ii) four (4) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 18% but less than 24% of the Closing Amount, (iii) three (3) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 12% but less than 18% of the Closing Amount, (iv) two (2) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 6% but less than 12% of the Closing Amount and (v) until the date the Topco Equityholders, in the

aggregate, beneficially own a number of voting shares representing less than five percent (5%) of the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Topco Equityholders on the Closing Date, one (1) director to the Vivid Seats Board. No reduction in the number of directors that Topco Equityholders and Horizon Equityholders are entitled to designate pursuant to the foregoing two sentences shall shorten the term of any such designated director then-serving on the Vivid Seats Board. Additionally, once the Topco Equityholders, in the aggregate, beneficially own less than 40% of the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Topco Equityholders as of the Closing Date, none of the directors designated by the Topco Equityholders shall be required to qualify as “independent directors” under any stock exchange regulations. In the event the size of the Vivid Seats Board is increased in accordance with applicable law and Vivid Seats PubCo’s organizational documents, the Topco Equityholders shall have the right to designate a number of directors of the Vivid Seats Board which give the Topco Equityholders the same percentage of total directors on the Vivid Seats Board as permitted to be designated pursuant to foregoing, rounded up to the next whole number.

### ***Resignation; Removal; Vacancies***

Any director designated by the Topco Equityholders or the Horizon Equityholders may resign at any time upon written notice to the Vivid Seats Board. The Topco Equityholders have the exclusive right to remove a director designated by the Topco Equityholders or to fill any vacancy created by a director designated by the Topco Equityholders. The Horizon Equityholders have the exclusive right to remove a director designated by the Horizon Equityholders or to fill any vacancy created by a director designated by the Horizon Equityholders.

### ***Voting; Necessary Actions***

Hoya Topco and Sponsor agree to take all actions necessary to cause the directors designated by the Topco Equityholders and the Horizon Equityholders to be appointed to the Vivid Seats Board, including all actions (to the extent such actions are not prohibited by applicable law, within such party’s control and do not directly conflict with any rights expressly granted to such party in the Stockholders’ Agreement, the Transaction Agreement, the Registration Rights Agreement, the Vivid Seats PubCo Amended and Restated Charter or the Vivid Seats PubCo Amended and Restated Bylaws) reasonably necessary and desirable within his, her or its control to cause such result, including, without limitation (i) calling special meetings of the Vivid Seats Board and the stockholders of Vivid Seats PubCo, (ii) voting or providing a proxy with respect to the Vivid Seats PubCo common stock beneficially owned by such party, (iii) voting in favor of the adoption of stockholders’ resolutions and amendments to the Vivid Seats PubCo Amended and Restated Charter or Vivid Seats PubCo Amended and Restated Bylaws, including executing written consents in lieu of meetings, (iv) requesting members of the Vivid Seats Board (to the extent such members were elected, nominated or designated by the party obligated to undertake such action) to act (subject to any applicable fiduciary duties) in a certain manner or causing them to be removed in the event they do not act in such a manner and (v) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such a result (collectively, the “Necessary Actions”).

Each of Vivid Seats PubCo, Sponsor and Hoya Topco agree not to take, directly or indirectly, any actions (including removing directors in a manner inconsistent with the Stockholders’ Agreement) that would knowingly frustrate, obstruct or otherwise affect the provisions of the Stockholders’ Agreement and the intention of the parties with respect to the composition of the Vivid Seats Board (as described above). Each of Sponsor and Hoya Topco will take all Necessary Actions including voting its shares of Vivid Seats PubCo common stock in such manner as may be necessary to elect and/or maintain in office as members of the Vivid Seats Board those individuals designated by the Topco Equityholders and the Horizon Equityholders in accordance with the Stockholders’ Agreement.

### **Controlled Company**

By virtue of the Topco Equityholders' voting power of more than fifty percent (50%) of the total voting power of the shares of capital stock of Vivid Seats PubCo immediately following the Closing, Vivid Seats PubCo will, after the Closing, qualify as a "controlled company" within the meaning of Nasdaq Listing Rule 5615(c)(1). Following the Closing, Vivid Seats PubCo agrees and acknowledges that, unless otherwise agreed by the Topco Equityholders, it shall elect, to the extent permitted under the Nasdaq listing standards, to be treated as a "controlled company" within the meaning of Nasdaq Listing Rule 5615(c)(1).

### **Lock-Up**

Sponsor and Hoya Topco agree to not transfer any lock-up shares during the Lock-up Period, in each case, subject to limited exceptions as contemplated thereby, including that each of Sponsor and Hoya Topco may transfer lock-up shares during the Lock-up Period in a cumulative aggregate amount of shares of common stock representing up to: (a) fifty percent (50%) of their lock-up shares on the date that is six (6) months following the Closing Date and (b) the remaining lock-up shares on any date, at least six (6) months after the Closing, on which (i) the price per lock-up share exceeds \$15.00 per share for twenty (20) trading days within a thirty (30) day trading period and (ii) the average daily trading volume exceeds one (1) million shares of Vivid Seats PubCo common stock during such thirty (30) trading day period.

### **Termination**

Following the Closing:

- Section 2 of the Stockholders' Agreement (Agreement to Vote), Section 3 of the Stockholders' Agreement (Board of Directors) and Section 6 of the Stockholders' Agreement (Covenants of the Company) will terminate automatically (without any action by any party to the Stockholders' Agreement) on the first date on which no voting party has the right to designate a director to the Vivid Seats Board under the Stockholders' Agreement; provided, that the provisions in Section 6(b) of the Stockholders' Agreement (regarding indemnification of directors of Vivid Seats PubCo and maintenance of director and officer liability insurance by Vivid Seats PubCo) will survive such termination;
- Section 4 of the Stockholders' Agreement (Controlled Company) will terminate automatically (without any action by any party to the Stockholders' Agreement) on the first date on which the combined voting power of the Topco Equityholders no longer exceeds fifty percent (50%) of the total voting power of Vivid Seats PubCo then outstanding;
- Section 8 of the Stockholders' Agreement (Confidentiality) will terminate (i) as to Hoya Topco one (1) year after the last director designated by the Topco Equityholders no longer serves on the Vivid Seats Board and (ii) as to Sponsor one (1) year after the director designated by the Horizon Equityholders no longer serves on the Vivid Seats Board; and
- the remainder of the Stockholders' Agreement will terminate automatically (without any action by any party to the Stockholders' Agreement) (i) as to Hoya Topco when the Topco Equityholders cease to beneficially own any voting shares of Vivid Seats PubCo and (ii) as to Sponsor when the Horizon Equityholders cease to beneficially own any voting shares of Vivid Seats PubCo.

### **Sponsor Agreement**

In connection with the execution of the Transaction Agreement, Horizon entered into a Sponsor Agreement with Sponsor and Hoya Topco. Pursuant to the Sponsor Agreement, Sponsor agreed to vote in favor of the Transaction Agreement and the business combination and the other Proposals, in each case, subject to the terms and conditions contemplated by the Sponsor Agreement.

Sponsor has agreed to not transfer any lock-up shares during the Lock-up Period, in each case, subject to limited exceptions as contemplated thereby.

Sponsor has also agreed to provide the Sponsor Backstop Commitment, in consideration for a fee of approximately \$11.7 million.

The Sponsor Agreement and all of its provisions will terminate (other than the lock-up described above) and be of no further force or effect upon the earlier of (a) the consummation of the business combination, (b) the termination of the Transaction Agreement and (c) the liquidation of Horizon. Upon such termination of the Sponsor Agreement, all obligations of the parties under the Sponsor Agreement will terminate, without any liability or other obligation on the part of any party thereto to any person in respect thereof or the transactions contemplated hereby, and no party thereto will have any claim against another (and no person will have any rights against such party), whether under contract, tort or otherwise, with respect to the subject matter thereof; provided, however, that the termination of the Sponsor Agreement will not relieve any party thereto from liability arising in respect of any willful and material breach of the Sponsor Agreement prior to such termination.

### **Tax Receivable Agreement**

At the Closing of the business combination, Vivid Seats PubCo, Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders will enter into the Tax Receivable Agreement.

Pursuant to the Tax Receivable Agreement, Vivid Seats PubCo will generally be required to pay Hoya Topco and the other TRA Holders 85% of the amount of savings, if any, in U.S. federal, state, local, and foreign taxes that are based on, or measured with respect to, net income or profits, and any interest related thereto that the Tax Group (i.e Vivid Seats PubCo and applicable consolidated, unitary, or combined subsidiaries thereof) realizes, or is deemed to realize, as a result of certain Tax Attributes, which include:

- existing tax basis in certain assets of Hoya Intermediate and certain of its direct or indirect subsidiaries, including assets that will eventually be subject to depreciation or amortization, once placed in service;
- tax basis adjustments resulting from taxable exchanges of Intermediate Common Units (including any such adjustments resulting from certain payments made by Vivid Seats PubCo under the Tax Receivable Agreement) acquired by Vivid Seats PubCo from a TRA Holder pursuant to the terms of the Second A&R LLCA;
- certain tax attributes of Blocker Corporations holding Intermediate Common Units that are acquired directly or indirectly by Vivid Seats PubCo pursuant to a Reorganization Transaction;
- certain tax benefits realized by Vivid Seats PubCo as a result of certain U.S. federal income tax allocations of taxable income or gain away from Vivid Seats PubCo and to other members of Hoya Intermediate and deductions or losses to Vivid Seats PubCo and away from other members of Hoya Intermediate, in each case, as a result of the business combination; and
- tax deductions in respect of portions of certain payments made under the Tax Receivable Agreement.

Under the Tax Receivable Agreement, the Tax Group will generally be treated as realizing a tax benefit from the use of a Tax Attribute on a “with and without” basis, thereby generally treating the Tax Attributes as the last item used, subject to several exceptions. Payments under the Tax Receivable Agreement generally will be based on the tax reporting positions that Vivid Seats PubCo determines (with the amount of subject payments determined in consultation with an advisory firm and subject to the TRA Holder Representative’s review and consent), and the IRS or another taxing authority may challenge all or any part of a position taken with respect to Tax Attributes or the utilization thereof, as well as other tax positions that Vivid Seats PubCo takes, and a court may sustain such a challenge. In the event that any Tax Attributes initially claimed or utilized by the Tax Group



are disallowed, the TRA Holders will not be required to reimburse Vivid Seats PubCo for any excess payments that may previously have been made pursuant to the Tax Receivable Agreement, for example, due to adjustments resulting from examinations by taxing authorities. Rather, any excess payments made to such TRA Holders will be applied against and reduce any future cash payments otherwise required to be made by Vivid Seats PubCo under the Tax Receivable Agreement after the determination of such excess. However, a challenge to any Tax Attributes initially claimed or utilized by the Tax Group may not arise for a number of years following the initial time of such payment and, even if challenged earlier, such excess cash payment may be greater than the amount of future cash payments that Vivid Seats PubCo might otherwise be required to make under the terms of the Tax Receivable Agreement and, as a result, there might not be future cash payments against which such excess can be applied. As a result, in certain circumstances Vivid Seats PubCo could be required to make payments under the Tax Receivable Agreement in excess of the Tax Group's actual savings in respect of the Tax Attributes, which could materially impair the financial condition of Vivid Seats PubCo and the Tax Group.

The Tax Receivable Agreement will provide that, in the event of certain early termination events (including certain changes of control, material breaches, or at the option of Vivid Seats PubCo subject to the approval of a majority of its independent directors), Vivid Seats PubCo will be required to make a lump-sum cash payment to all the TRA Holders equal to the present value of all forecasted future payments that would have otherwise been made under the Tax Receivable Agreement, which lump-sum payment would be based on certain assumptions, including those relating to there being sufficient future taxable income of the Tax Group to fully utilize the Tax Attributes over certain specified time periods and that all Intermediate Common Units (including Intermediate Common Units held by Blocker Corporations) that had not yet been exchanged for Vivid Seats Class A common stock or cash are deemed exchanged for cash. The lump-sum payment could be material and could materially exceed any actual tax benefits that the Tax Group realizes subsequent to such payment. In addition, if certain assets of Hoya Intermediate or its subsidiaries are transferred this may result in a deemed sale of such assets for purposes of the Tax Receivable Agreement and deemed accelerated utilization of certain associated Tax Attributes.

As a result of the foregoing, in some circumstances (i) Vivid Seats PubCo could be required to make payments under the Tax Receivable Agreement that are greater than or less than the actual tax savings that the Tax Group realizes in respect of the Tax Attributes and (ii) it is possible that Vivid Seats PubCo may be required to make payments years in advance of the actual realization of tax benefits (if any, and may never actually realize the benefits paid for) in respect of the Tax Attributes (including if any early termination events occur). In these situations, Vivid Seats PubCo's obligations under the Tax Receivable Agreement could have a material and adverse impact on Vivid Seats PubCo's liquidity and could have the effect of delaying, deferring, or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that Vivid Seats PubCo will be able to finance its obligations under the Tax Receivable Agreement in a manner that does not adversely affect its working capital and growth requirements.

Under the Tax Receivable Agreement, Vivid Seats PubCo will be required to provide the TRA Holder Representative with a schedule showing the calculation of payments that are due under the Tax Receivable Agreement with respect to each applicable taxable year. This calculation will be based upon the advice of an advisory firm. Payments under the Tax Receivable Agreement will generally be required to be made to the TRA Holders a short period of time after an applicable schedule becomes final pursuant to the procedures set forth in the Tax Receivable Agreement; however, until a TRA Holder exchanges at least 5% of its Intermediate Common Units, Vivid Seats PubCo will hold such payments until the TRA Holder satisfies such threshold exchange. Interest on such payments will begin to accrue on the due date (without extensions) of the U.S. federal income tax return of Vivid Seats PubCo for the applicable taxable year. Any late payments that may be made under the Tax Receivable Agreement will continue to accrue interest (generally at a default rate) until such payments are made.

Vivid Seats PubCo will be required to notify and keep the TRA Holder Representative reasonably informed regarding tax audits or other proceedings the outcome of which is reasonably expected to adversely affect



payments to any TRA Holder under the Tax Receivable Agreement and the TRA Holder Representative will have the right to (i) discuss with Vivid Seats PubCo, and provide input and comment to Vivid Seats PubCo regarding, any portion of any such tax audit or proceeding and (ii) participate in, at the TRA Holder Representative's expense, any such portion of any such tax audit or other tax proceeding to the extent it relates to issues the resolution of which would reasonably be expected to affect payments to any TRA Holder under the Tax Receivable Agreement. Vivid Seats PubCo will not be permitted to settle or fail to contest any issue pertaining to income taxes that is reasonably expected to adversely affect the TRA Holders' rights and obligations under the Tax Receivable Agreement without the consent of the TRA Holder Representative (which is not to be unreasonably withheld, conditioned or delayed).

### **PIPE Subscription Agreements**

Horizon and Vivid Seats PubCo entered into the subscription agreements (the "Subscription Agreements") with the PIPE Investors, pursuant to which the PIPE Investors have agreed to subscribe for and purchase, an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million; provided, however, such subscription is subject to increase due to the Sponsor Backstop Commitment. The Subscription Agreements provide that Vivid Seats PubCo will grant the investors in the PIPE Subscription certain customary registration rights. Vivid Seats PubCo will, within 30 days after the consummation of the business combination, file with the SEC a registration statement registering the resale of such shares of Vivid Seats Class A common stock and will use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. The closing of the PIPE Subscription is contingent upon, among other things, the substantially concurrent consummation of the business combination.

Pursuant to the terms of the Subscription Agreements, the PIPE Investors have agreed to cooperate in good faith with Horizon and any governmental authority and take any and all actions required to satisfy the certain regulatory approvals and to consummate the business combination and the transactions contemplated by the Subscription Agreements.

In addition, pursuant to the terms of the Subscription Agreements, the PIPE Investors agreed to waive any claims they may have at the Closing or in the future as a result of, or arising out of, any negotiations, contracts or agreements, with Horizon, including with respect to the Trust Account. The Subscription Agreements will be terminated, and be of no further force and effect, upon the earlier to occur of (i) such date and time as the Transaction Agreement is terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties thereto and Vivid Seats PubCo to terminate such Subscription Agreement, (iii) the Agreement End Date (as defined in the Transaction Agreement), if the Closing has not occurred by such date, or (d) if any of the conditions to Closing set forth in the Subscription Agreement are not satisfied or waived, or are not capable of being satisfied, on or prior to the Closing and, as a result thereof, the transactions contemplated by the Subscription Agreement will not be and are not consummated at the Closing.

### **Background of the Business Combination**

The terms of the business combination are the result of negotiations between the representatives of Horizon and Hoya Topco. The following is a brief description of the background of these negotiations and the resulting business combination.

Horizon is a blank check company incorporated as a Cayman Islands exempted company and incorporated for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. In conducting a targeted search for a business combination target, Horizon's management and the board of directors utilized the Sponsor's global network, along with investing and industry-specific knowledge. The terms of the Transaction Agreement and the related ancillary documents are the result of extensive negotiations among Horizon, Hoya Topco and their respective representatives and advisors.

Horizon's initial public offering consisted of 50,000,000 units at \$10.00 per unit (or 57,500,000 units if the underwriters' option to purchase additional units was exercised in full), 14,375,000 ordinary shares and the sale of 8,000,000 warrants (or 9,000,000 warrants if the underwriters' option to purchase additional unit was exercised in full) at a price of \$1.50 per warrant in a private placement to the Sponsor.

Following the completion of its initial public offering, Horizon's officers and directors commenced an active, targeted search for an initial set of potential business combination targets, leveraging the Sponsor's network of relationships, as well as the prior experience and network of Horizon's directors and officers. Horizon's directors and officers primarily focused on assets that target four broad themes: (1) innovative platforms that support consumer access to financial wellness solutions, (2) next-generation alternative asset management platforms, (3) traditional financial services businesses requiring an injection of capital due to exogenous shocks from the current environment and (4) insurance and related offerings, including insurance technology, administration and other solutions.

Horizon's Existing Organizational Documents provide that, to the fullest extent permitted by applicable law: (i) no individual serving as a director or an officer shall have any duty, except to the extent expressly assumed by contract, to refrain from engaging directly or indirectly in the same of similar business activities or lines of business as Horizon; and (ii) Horizon renounces any interest or expectancy in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for any director or officer, on the one hand, and Horizon on the other. Certain of Horizon's directors, who are responsible for managing the direction of Horizon's operations, hold positions of responsibility with other entities (including affiliated entities) that may also search for business opportunities. Accordingly, some of Horizon's directors may have become aware of business opportunities that may have been appropriate for presentation to us as well as to the other entities with which they are or may become affiliated. Due to these existing and potential future affiliations, they may have presented potential business opportunities to other entities prior to presenting them to Horizon, which could have caused additional conflicts of interest. In particular, both Horizon's Chief Executive Officer, Chief Financial Officer and Director, Todd L. Boehly, and Horizon's Vice President, Robert Ott, hold similar positions at Horizon Acquisition Corporation II, another special purpose acquisition company and an affiliate of Horizon ("Horizon II"). As detailed below, a potential business combination with Vivid Seats was first presented by Hoya Topco to Horizon II, before Horizon II decided to pursue an alternative business combination opportunity.

Specifically, Horizon intended to satisfy any or all of the following key criteria for a business combination target: (a) fundamentally sound companies that may currently be underperforming, (b) have strong management teams with a track record of driving growth and profitability, and can benefit from the vast network, experience and guidance of Horizon's management team, (c) defensible market position and demonstrated competitive advantages, such as a differentiated technology, continuous product innovation and platform development, multi-channel distribution capabilities, diversified customer base or other, creating barriers to entry against new competitors, (d) recurring, predictable revenues and the history of, or the near-term potential to, generate stable and sustainable free cash flow, (e) exhibit unrecognized value or other characteristics, desirable returns on capital, and a need for capital to achieve the company's growth strategy, that Horizon believes have been misevaluated by the marketplace based on its analysis and due diligence review, (f) enhanced shareholder value through a combination with Horizon, and an attractive risk-adjusted return for shareholders, (g) benefit from the application of innovative financial services technologies, and (h) benefit from being a publicly traded company, with access to broader capital markets, to achieve the company's business strategy.

Over the course of this targeted search, Horizon identified an initial set of numerous potential business combination targets to further explore and evaluate and proceeded to conduct varying levels of preliminary due diligence on each, with a preliminary focus on certain targets which Horizon's directors and officers or the Sponsor felt were unique and attractive and could satisfy any or all of the key criteria for a business combination target, including, in the case of Hoya Topco, among other things, the ability to achieve an expeditious timeline to signing and closing based on its preparedness and readiness to engage in a business combination and be a public company. Horizon's preliminary due diligence exercise included evaluations of various aspects of many of such

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companies, including their management teams, products and services, customer base, research and development capabilities, market potential and financial information, in each case based on publicly available information and other market research available to the management team and its advisors.

In total, following its initial public offering, representatives of Horizon, its advisors and the Sponsor initiated contact with approximately 58 business combination opportunities, with the majority centered in financial services and financial technology space. Horizon reviewed opportunities on a rolling basis, including based on discussions and information received under confidentiality agreements entered into with a small number of potential counterparties. After reviewing and considering the foregoing opportunities, Horizon continued to cull its list of prospects based on a core set of criteria including maturity of the business, size of the business, management team, public market readiness and growth prospects. Following such reviews and discussions, and at various points in time, Horizon discontinued its review of certain targets for one or various reasons, including maturity of the business, size of the business, growth prospects, a near-term path to profitability, public market readiness, including the state of financial systems or controls, or impact of COVID-19. Horizon's level of initial discussions varied across potential targets, with some progressing to extensive due diligence, while others not moving beyond initial discussions. In connection with one of these business combination opportunities initially considered by Horizon, on June 11, 2021, Horizon received from a third party a payment of \$17,500,000 (the "Payment"), which is \$25,000,000, net of a 30% U.S. federal income tax withholding tax. The Payment was made to Horizon because of Horizon's previous participation in discussions with a third party relating to a potential business combination. Horizon spent substantial efforts in that process, but ultimately the business combination was not consummated with Horizon and Horizon received the Payment.

Following this preliminary evaluation of these companies, Horizon determined to focus its resources and efforts in the near-term on a smaller subset of potential targets (including Hoya Topco), which Horizon believed, based on this preliminary evaluation and the experience of its officers and directors, were most suitable for a business combination due to the strength of the following factors relative to the other potential targets: (a) the target's future prospects and competitive positioning; (b) its preparedness for a business combination and its readiness to be a public company, as well as the ability to achieve an expeditious timeline both to signing and closing based on these factors; and (c) the enterprise valuation ascribed to the potential target by Horizon's directors and officers. In connection with evaluating and performing diligence on this smaller subset of companies, Horizon signed non-disclosure agreements and reviewed information received under the terms of these non-disclosure agreements.

Horizon believed that, compared to other potential targets, Hoya Topco satisfied the most of the business combination criteria described above and provided Horizon with the most attractive potential business combination because, among other things, Hoya Topco: (a) delivers significant and unique value to its customers; (b) is a leader in a large and growing total addressable market; (c) demonstrated exceptional economic models; (d) is led by a world class management team; (e) has a differentiated technology platform; (f) has a proven research and development engine; (g) demonstrated sustainable revenue growth; (h) is capable of capitalizing on long-term industry tailwinds; and (i) provided compelling valuation data.

Hoya Topco began considering a potential transaction with a special purpose acquisition company (a "SPAC") in Fall 2020. In connection with its review of such a transaction, Hoya Topco engaged Evercore Inc. ("Evercore") to act as its financial advisors and Latham & Watkins LLP ("Latham") to act as its legal counsel. Representatives of Hoya Topco, Vivid Seats management and the Private Equity Owner worked with Evercore to prepare materials on the Vivid Seats business to be reviewed by potential SPAC counterparties. From February 4, 2021 through February 17, 2021, representatives of Evercore sent materials to nine SPACs to solicit interest in a potential SPAC transaction with Hoya Topco and its subsidiaries, eight of which executed non-disclosure agreements with Hoya Topco to receive additional information on Vivid Seats.

On September 2, 2020, Horizon engaged Kirkland & Ellis LLP ("Kirkland") to act as its legal counsel.

On February 8, 2021, representatives of Evercore held an initial conference call with representatives of Horizon to discuss the potential business combination with Vivid Seats. The representatives of Evercore subsequently sent a draft

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non-disclosure agreement on behalf of Hoya Topco to Horizon II for purposes of enabling confidential discussions and review of confidential information in connection with the potential business combination, which non-disclosure agreement was negotiated between the parties and later executed on February 12, 2021.

On February 16, Hoya Topco and Evercore sent to Horizon II a non-binding term sheet with respect to a potential business combination. Among other matters, the term sheet: (i) covered the terms of the transaction structure; (ii) proposed a 30-day exclusivity period; (iii) proposed that any equity value would not be subject to any customary adjustments to purchase price; (iv) proposed a six month lock-up period applicable to Hoya Topco shares in the target and a twelve month lock-up period for Horizon II Sponsor, LLC (“Horizon II Sponsor”) and its affiliates’ shares in the surviving company; (v) provided that Hoya Topco Equityholders and Horizon II Sponsor would be entitled to customary registration rights; (vi) provided ten days for the completion of due diligence; (vii) with respect to transaction expenses, proposed that all fees and expenses of the target be paid by the surviving company without reduction to the consideration and provided a cap on Horizon II’s fees and expenses; (viii) proposed that the board of directors of the surviving company will consist of a majority of directors designated prior to the closing by Hoya Topco; the proposal left a placeholder for the number of directors to be designated by Horizon II; (ix) the scope of “exempted persons” covered by the waiver of corporate opportunity in the Vivid Seats Organizational Documents including, among others, the Private Equity Owner and excluding the Horizon II Sponsor and Eldridge Industries, LLC; and (x) included certain customary closing conditions, along with a request that there shall not be any stand-alone material adverse effect (“MAE”) closing condition. The term sheet did not propose the size of the PIPE Subscription.

On February 16, 2021, Vivid Seats management made a presentation to representatives of Horizon II, also attended by representatives of Evercore, to review the business, financial results and strategy of Vivid Seats. A further conference call was held by representatives of Horizon II and Vivid Seats management, also attended by representatives of Evercore, to discuss the Vivid Seats financial model and projections.

On February 22, 2021, Horizon II sent Vivid Seats, LLC, an affiliate of Hoya Topco, a non-binding letter of intent (the “LOI”) along with a response to the non-binding term sheet provided on February 14, 2021. The letter of intent welcomed negotiations towards a transaction agreement with Vivid Seats and conveyed how the transaction would benefit the entities. It was set to expire on March 1, 2021. Horizon II’s response to the non-binding term sheet included, among other terms: (i) a target \$225 million size for the PIPE Subscription and Eldridge Industries, LLC’s subscription of \$150 million; (ii) a 45-day exclusivity period; (iii) a \$2.4 billion enterprise value on a cash-free and debt-free basis, subject to adjustments for cash on hand, debt and debt-like obligations and any change of control costs and payments; (iv) the following lock-up provisions applicable to both Hoya Topco shares in the target and Horizon II Sponsor and its affiliates’ shares in the surviving company: (x) 50.0% of such shares and warrants subject to lock-up restrictions until the six (6) month anniversary of closing and (y) 50.0% of such shares and warrants subject to lock-up restrictions until the twelve (12) month anniversary of closing, subject to early release upon achieving certain share price thresholds post-Closing; (v) no time limitation on completion of due diligence; (vi) with respect to transaction expenses, that: (x) Horizon II and the target will each pay their respective expenses (including fees and expenses of legal counsel, investment bankers, brokers, finders and other representatives and consultants) in connection with the term sheet and the transactions contemplated thereby, provided, that unless the failure to enter into a definitive transaction agreement in connection with acquisition results from the refusal of Horizon II to enter into documentation substantially consistent with the term sheet, the target will reimburse the reasonable and documented out-of-pocket costs and expenses incurred by Horizon II Sponsor and/or Horizon II in connection with the acquisition promptly upon the request of Horizon II Sponsor following the abandonment of the acquisition prior to entering into the definitive transaction agreement in an amount not to exceed \$500,000 and (y) assuming the acquisition is consummated, all fees and expenses of the target and Horizon II shall be paid by the surviving company without reduction to the consideration; (vii) the scope of “exempted persons” covered by the waiver of corporate opportunity in the Vivid Seats Organizational Documents including, among others, the Private Equity Owner and Horizon II Sponsor and Eldridge Industries, LLC; and (viii) addition of a stand-alone MAE closing condition of the proposed transaction.

Between February 22, 2021 and March 5, 2021, representatives of Horizon II and Kirkland, on the one hand, and representatives of Hoya Topco and Latham, on the other hand, exchanged multiple revised drafts of the non-binding term sheet and came to an agreement on the outstanding business issues. The final agreement substantially reflected Horizon II's proposal sent on February 22, 2021 and described above, with the following notable changes: (a) while the implied enterprise value in connection with the business combination was set at \$2.4 billion on a cash-free and debt-free basis (consistent with Horizon II's February 22, 2021 proposal), the equity value to be paid at closing would be established and fixed at signing, without any pre-closing adjustments for cash, debt, transaction expenses or working capital; (b) deletion of expense reimbursement obligation in the event of failure to enter into a definitive transaction agreement; and (c) provided that Horizon II can designate 1 (one) director to the board of directors of the surviving company.

On February 26, 2021, the board of managers of Hoya Topco (the "Hoya Topco Board"), comprised of Mark Anderson, Jerry Bednyak, Stanley Chia, David Donnini, Thomas Ehrhart, Patrick Martin, Martin Taylor and Eric Vassilatos, held a telephonic meeting, with members of Vivid Seats' management and representatives of Latham, Crescent, Vista Equity Partners and the Private Equity Owner to discuss the current status of the potential SPAC transaction under consideration by Hoya Topco and an update on Hoya Topco's ongoing SPAC outreach.

On March 3, 2021, Horizon II decided to pursue a transaction with another prospective target that it had been in active discussions with since late 2020 and entered into an exclusivity agreement with that other target, preventing Horizon II from pursuing a transaction with Vivid Seats. On that same date, following Horizon II's decision to enter into exclusive negotiations with another prospective target, Horizon began discussions with Hoya Topco regarding a business combination transaction with Vivid Seats.

On March 5, 2021, Vivid Seats management made a presentation to the Horizon board of directors, also attended by representatives of Evercore, to review the business, financial results and strategy of Vivid Seats. The parties also finalized, executed and delivered the LOI on March 5. Pursuant to the LOI, the parties agreed to enter into exclusive negotiations regarding a potential business combination. The LOI also contemplated, among other things, the transaction structure of the business combination, certain governance matters of the surviving corporation, entry into the Tax Receivable Agreement and a PIPE financing of \$225.0 million, at a price of \$10.00 per share, which would be committed upon signing of the Transaction Agreement.

During the period between execution of the LOI and signing of the Transaction Agreement, representatives of Vivid Seats, Private Equity Owner and Horizon, together with their respective financial and legal representatives, held numerous conference calls with respect to terms and conditions of the business combination and related business, financial and legal matters, including the related PIPE financing process.

On March 6, 2021, representatives of Latham and Kirkland held an initial conference call to discuss timing and responsibility for drafts of transaction documents and process for signing and announcing the business combination.

Between March 6, 2021 and April 21, 2021, representatives of Horizon, representatives of Vivid Seats, and advisors of Horizon and Vivid Seats exchanged numerous revised drafts of, and held various calls and meetings to discuss, the investor management presentation to be provided to potential investors in the PIPE Subscription, including the use of proceeds to be included therein, research analyst coverage and outstanding information requests related thereto. From March 19, 2021 through April 13, 2021, representatives of Horizon, representatives of Vivid Seats, and advisors of Horizon and Vivid Seats held conversations with potential investors with respect to the PIPE Subscription. Horizon and Vivid Seats came to agreement on the proposed size and terms of the PIPE Subscription and Kirkland, Latham and Skadden Arps exchanged drafts of the form of Subscription Agreement to be used in the PIPE Subscription. The proposed size of the PIPE Subscription was based on the terms of the Transaction Agreement requiring that the cash proceeds from the Trust Account and PIPE Subscription must be at least \$769.0 million ("Transaction Proceeds"). Given that, as of December 31, 2020, funds in the Trust Account totaled approximately \$544.0 million, the proposed size of the PIPE Subscription was \$225.0 million. In the event that redemptions of Horizon Class A ordinary shares reduce the

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Transaction Proceeds to an amount below \$769.0 million, Sponsor agreed increase its commitment to the PIPE Subscription by a corresponding amount (the “Sponsor Backstop Commitment”).

On March 8, 2021, representatives of Latham sent representatives of Kirkland an initial draft of the Transaction Agreement, which initial draft proposed a customary “Up-C” structure, as contemplated by the LOI, with two classes of common stock (one class to be held by the public stockholders of Horizon and Sponsor and entitled to economic rights and one vote per share, and the other class to be held by Hoya Topco with one vote per share but no economic rights).

On March 9, 2021, representatives of Vivid Seats, together with Latham and Evercore, Horizon, together with Kirkland and Credit Suisse Securities (USA) LLC (“Credit Suisse”), together with Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden Arps”), counsel to Credit Suisse, participated in an all hands conference call to discuss timing and process for signing and announcing the business combination, including the related PIPE financing process.

On March 10, 2021, representatives of Latham sent representatives of Kirkland initial drafts of the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws, which, consistent with other “Up-C” structures in transactions of this type, (i) contemplated an equivalent number of outstanding Intermediate Common Units, on the one hand, and outstanding Vivid Seats Class B common stock, on the other hand, and (ii) restricted the issuance of Vivid Seats Class B common stock solely to holders of Intermediate Common Units and in an amount equal to the number of Intermediate Common Units held by such holder.

On March 11, 2021, representatives of Vivid Seats, Evercore, Latham, Kirkland and Skadden Arps held a conference call regarding certain due diligence matters related to the Vivid Seats business. During the call, Kirkland attorneys asked a series of questions related to labor and employment, employee benefits, executive compensation, real estate, environmental, health and safety, technology and intellectual property, IT, cybersecurity and data matters, and general corporate matters. They also asked follow up questions based on materials that had been made available in an online data room. Later on March 11, 2021 and again on March 15, 2021, representatives of Vivid Seats, together with Latham, and Horizon, together with Kirkland, held conference calls regarding certain legal due diligence matters related to Vivid Seats.

On March 12, 2021, representatives of Latham sent representatives of Kirkland initial drafts of (i) the Stockholders’ Agreement, which initial draft provided for the lock-up of certain shares held by Sponsor and Hoya Topco and director nomination rights of Hoya Topco and Sponsor, in each case, consistent with the LOI agreed to by the parties and (ii) the Second A&R LLCA, which initial draft included mechanisms to maintain the ownership split of Hoya Intermediate by Hoya Topco and Vivid Seats PubCo consistent with the ownership split at Vivid Seats PubCo as between Hoya Topco and the other public shareholders, as is customary in “Up-C” structures.

From March 12, 2021 through April 21, 2021, representatives of Vivid Seats, Horizon, and the Crescent Holders with respect to the Crescent Purchase Agreement, and their respective legal counsel conducted various telephonic conference calls and exchanged and negotiated drafts of the other ancillary agreements related to the business combination, including the Exchange Agreement, the Crescent Purchase Agreement, the Sponsor Agreement, the form of the Second A&R LLCA, the form of the Registration Rights Agreement, the form of the Vivid Seats PubCo Amended and Restated Charter, the form of the Vivid Seats PubCo Amended and Restated Bylaws, the form of the Tax Receivable Agreement, the form of Stockholders’ Agreement, the 2021 Plan, the 2021 ESPP and the Plan of Merger.

On March 14, 2021, representatives of Latham sent representatives of Kirkland an initial draft of the Tax Receivable Agreement, which agreement was intended to appropriately reflect the value and benefit of the “Up-C” structure and any exchange of Intermediate Common Units for Vivid Seats Pubco Class A common stock by generally allocating 85% of certain tax savings generated by the transaction structure, including as a result of taxable exchanges of Intermediate Common Units, which allocation is customary for transactions of this nature and consistent with the LOI agreed to by the parties.

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On March 14, 2021, Horizon engaged Credit Suisse and Evercore Group L.L.C. (“Evercore LLC”), to act as placement agents (in such capacities, the “Placement Agents”) in connection with the PIPE Subscription.

On March 15, 2021, representatives of Kirkland sent representatives of Latham revised drafts of the Transaction Agreement.

On March 17, 2021, representatives of Kirkland sent representatives of Latham and Skadden Arps an initial draft of the form Subscription Agreement.

On March 18, 2021, representatives of Latham and Kirkland held a conference call to discuss certain key issues in the latest draft of the Transaction Agreement, including the interim operating restrictions on Hoya Topco and its Subsidiaries between signing and closing, the conditions under which the Horizon board of directors could modify its recommendation of the business combination, the use of proceeds to pay down Vivid Seats’ existing indebtedness, the amount of effort required to obtain any regulatory approvals and the scope of representations and warranties of Hoya Topco, among other terms.

On March 19, 2021, representatives of Latham sent representatives of Kirkland a revised draft of the Transaction Agreement, which draft removed Hoya Topco from the interim operating covenant, clarified the cash proceeds to be used to pay down existing indebtedness, limited the representations and warranties of Hoya Topco, expanded upon the actions Horizon would be obligated to take to obtain regulatory approvals (if any), and restricted the instances in which the Horizon board of directors could change its recommendation of the business combination by specifying that an “Intervening Event” (the basis for which the Horizon board of directors could change its recommendation of the business combination) could not relate to any other business combination proposal with a third party and could not take into account change in price or trading volume of Horizon common stock, whether the Vivid Seats projections were met or an adverse effect on Hoya Topco and its subsidiaries, among other things.

On March 20, 2021, representatives of Kirkland sent representatives of Latham an initial draft of the Amended and Restated Registration Rights Agreement.

On March 22, 2021, representatives of Kirkland sent representatives of Latham an initial draft of the Sponsor Support Agreement.

On March 27, 2021, representatives of Kirkland sent representatives of Latham a revised draft of the Transaction Agreement, which, among other things, expanded the Horizon board of directors’ right to modify its recommendation in favor of the business combination, including by removing the restriction against taking into consideration adverse effects on Hoya Topco and its subsidiaries for purposes of determining whether an “Intervening Event” has occurred.

On March 27, 2021, representatives of Latham sent representatives of Kirkland an initial draft of the Crescent Purchase Agreement, which draft provided for consideration in amount and type as required by the terms of the Class A Units of Hoya Topco set forth in the Topco LLC Agreement.

On April 1, 2021, representatives of Kirkland and Latham held a conference call to discuss the Transaction Agreement, including Sponsor’s recapitalization of Horizon Class B ordinary shares and use of proceeds, among other terms, as well as the other transaction documents.

Also on April 1, 2021, representatives of Latham sent representatives of Kirkland a revised draft of the Transaction Agreement, which, among other things, incorporated the transactions contemplated by the Crescent Purchase Agreement and the Domestication, clarified that Vivid Seats will not be required to use cash on hand immediately prior to the Closing to pay down indebtedness and restricted the instances in which the Horizon board of directors could change its recommendation of the business combination by specifying that an “Intervening Event” (the basis for which the Horizon board of directors could change its recommendation of the business combination) could not take into account any adverse effect on Hoya Topco and its subsidiaries.



On April 11, 2021, representatives of Kirkland sent representatives of Latham a revised draft of the Transaction Agreement, which revised draft, among other things, incorporated Sponsor's exchange of Horizon Class B ordinary shares for Horizon Warrants and certain tax matters.

Following negotiations between the parties through the first two weeks of April, culminating the week of April 11, 2021, regarding the overall terms of the potential business combination, and taking into consideration of the feedback received by Credit Suisse and Evercore during meetings with prospective PIPE investors, the parties agreed to reduce the enterprise value from \$2.4 billion to approximately \$2.0 billion, while also agreeing to terms on the Sponsor Backstop Commitment, the Exchange and the increase the number of Sponsor designated directors from one to three.

On April 15, 2021, a draft of the form of Subscription Agreement was distributed to potential PIPE Investors with respect to the PIPE Subscription. None of the PIPE Investors (other than Eldridge Industries, LLC and a financial services firm that provides 401(k) services to Vivid Seats) had any preexisting relationship with Horizon, Sponsor, Vivid Seats, or the Placement Agents. Between April 5, 2021 and April 21, 2021, Kirkland and Latham negotiated the terms and exchanged drafts of the Subscription Agreements with the potential PIPE Investors and their respective representatives and advisors, including with respect to the funding mechanics, representations and warranties, registration rights and indemnification provisions, and responded to follow-up questions and comments related thereto, particularly with respect to the Closing process and the expected timeline for consummating the business combination. During this time, the potential PIPE Investors conveyed to the Placement Agents their initial proposed subscription amounts. On April 21, 2021, a final version of the form of Subscription Agreement for institutional investors and a secondary form of Subscription Agreement for accredited investors were distributed to the potential PIPE Investors, which reflected the outcome of negotiations between Horizon, Vivid Seats, and the potential PIPE Investors and their respective representatives and advisors. On April 21, 2021, the potential PIPE Investors that had chosen to participate in the PIPE Subscription indicated their final subscription amounts and delivered executed Subscription Agreements to Kirkland.

On April 15, 2021, representatives of Latham sent representatives of Kirkland a revised draft of the Transaction Agreement, which reflected, among other things, the agreement by Horizon to take actions necessary to revise the Horizon Warrants such that the Horizon Warrants are treated as equity under the rules and guidelines of the SEC and certain other changes regarding tax returns.

On April 16, 2021, the Hoya Topco Board, with all members in attendance, held a telephonic meeting, with representatives of Latham, Evercore, Crescent, Vista Equity Partners and the Private Equity Owner, to discuss current status of negotiations of the business combination with Horizon and an update on Hoya Topco's ongoing outreach to potential investors for the PIPE Subscription. Evercore reviewed for the Hoya Topco Board its discussions with potential PIPE investors about the Vivid Seats business and valuation, as well as negotiations with Horizon regarding valuation, equity consideration and Sponsor's investment commitment. On the same date, Horizon's board of directors shared an initial version of the PIPE Investor Presentation (the "PIPE Investor Presentation") with the prospective PIPE investors. The PIPE Investor Presentation was jointly prepared by Horizon, Evercore LLC (who consulted with Credit Suisse on the set of comparable companies to be used in the comparable company analysis), Vivid Seats and Credit Suisse) who assisted in the selected of comparable companies for comparable company analysis and transaction summary descriptions).

On April 16, 2021, representatives of Kirkland sent representatives of Latham a revised draft of the Transaction Agreement, which reflected, among other things, certain changes related to the timing of the transactions contemplated thereunder and the preparation of tax returns.

On April 17, 2021, representatives of Latham sent representatives of Kirkland a revised draft of the Transaction Agreement, which reflected, among other things, the issuance of Intermediate Warrants to Hoya Topco, and certain other changes related to the preparation of tax returns.



From April 19, 2021 through April 21, 2021 representatives of Kirkland and Latham finalized the Transaction Agreement and the other ancillary agreements contemplated thereby.

On April 20, 2021, the Horizon board of directors held a virtual meeting, with representatives of Kirkland and Maples, to discuss, among other things, the Transaction Agreement and the transactions contemplated thereby. Following discussion, the Horizon board of directors unanimously determined to approve the Transaction Agreement and the transactions contemplated thereby.

On April 21, 2021, the Hoya Topco Board, with all members in attendance, held a telephonic meeting, with representatives of Latham, Evercore, Crescent, Vista Equity Partners and the Private Equity Owner, to discuss, among other things, the Transaction Agreement and the transactions contemplated thereby. Following discussion, the Hoya Topco Board determined to approve the Transaction Agreement and the transactions contemplated thereby.

On April 21, 2021, Horizon engaged Credit Suisse and Deutsche Bank Securities Inc. (“Deutsche Bank”) to act as its financial and equity capital markets advisors in connection with the business combination.

Later on April 21, 2021, Horizon, the Sponsor, Hoya Topco, Hoya Intermediate and Vivid Seats PubCo entered into the Transaction Agreement. On April 22, 2021, Horizon and Vivid Seats issued a joint press release announcing execution of the Transaction Agreement, which Horizon filed with a Current Report on Form 8-K along with the investor presentation prepared by members of Vivid Seats and Horizon’s management teams and used in connection with meetings regarding the PIPE Subscription and the announcement of the business combination. On April 26, 2021, Horizon filed a Current Report on Form 8-K/A with the Transaction Agreement, the Exchange Agreement, the Sponsor Support Agreement, form of Subscription Agreement and form of Stockholders’ Agreement.

### **Horizon’s Board of Directors’ Reasons for the Approval of the Business Combination**

Horizon’s board of directors considered a wide variety of factors in connection with its evaluation of the business combination. In light of the complexity of those factors, Horizon’s board of directors, as a whole, did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific factors it took into account in reaching its decision. Individual members of Horizon’s board of directors may have given different weight to different factors. This explanation of the reasons for Horizon’s board of directors’ approval of the business combination, and all other information presented in this section, is forward-looking in nature and, therefore, should be read in light of the factors discussed under “Cautionary Note Regarding Forward-Looking Statements.”

Horizon’s board of directors considered a number of factors pertaining to the business combination as generally supporting its decision to enter into the Transaction Agreement and the transactions contemplated thereby, including, but not limited to, the following:

- **Strong Historical Financial Performance and Economic Model.** Hoya Intermediate and Vivid Seats PubCo historically demonstrated strong financial performance and results of operations. Horizon’s board of directors took into account Vivid Seats’ historically strong Adjusted EBITDA margins and Adjusted EBITDA to free cash flow conversion rates, coupled with low capital expenditures and negative working capital;
- **Favorable Prospects for Future Growth and Financial Performance.** Horizon’s board of directors considered current information and forecast projections from Horizon and Vivid Seats PubCo’s management regarding (i) Hoya Intermediate and Vivid Seats PubCo’s business, prospects, financial condition, operations, technology, products, services, management, competitive position, and strategic business goals and objectives, (ii) general economic, industry, regulatory and financial market

conditions and (iii) opportunities and competitive factors within Vivid Seats PubCo's industry. Among other factors, Horizon's board of directors reviewed Vivid Seats PubCo's management forecasted financials and key financial metrics underlying such projections, as well as Vivid Seats PubCo's projected revenue year over year growth rate percentage over the period from 2022 (projected) through 2023 (projected), as well as enterprise value as a multiple of Adjusted EBITDA and as a multiple of revenue for estimated calendar year 2022 and estimated calendar year 2023. Based on its review, Horizon's board of directors concluded that the estimated values for Vivid Seats PubCo represented attractive valuation relative to such estimated values of comparable companies. For further information, see below "— Comparable Company Analysis" and "— Certain Forecasted Financial Information for Vivid Seats PubCo." Horizon's board of directors also considered general market conditions and Vivid Seats PubCo's competitive position. There is a significant and growing market opportunity serving the sports and entertainment markets and Vivid Seats PubCo is well-positioned for both significant immediate growth in post-pandemic recovery and above-market long-term growth. For further information, see "The Business of Vivid Seats — Our Industry Opportunity" and "The Business of Vivid Seats — Our Strength";

- **Differentiated Technology Platform.** Vivid Seats PubCo's best-in-class proprietary search algorithms focuses customer experience on event discovery and conversion and creates unique engine for generating new customers. The platform also presents what Horizon believes to be a leading enterprise resource planning (ERP) system for the seller community;
- **Compelling Valuation.** The implied enterprise value in connection with the business combination is approximately \$2.0 billion, which Horizon's board of directors believes represents an attractive valuation relative to selected comparable companies;
- **World Class Management Team.** Hoya Intermediate and Vivid Seats PubCo's experienced management team, led by Stanley Chia, Hoya Intermediate and Vivid Seats PubCo's Chief Executive Officer, brings veteran leadership with highly relevant experience;
- **Potential for Future Accretive M&A.** Horizon believes that Hoya Intermediate and Vivid Seats PubCo are positioned as an attractive M&A platform opportunity as it continues to expand its offerings and geographic reach; and
- **Likelihood of Closing the Business Combination.** The belief of the Horizon board of directors that an acquisition by Horizon has a reasonable likelihood of closing without potential issues under applicable antitrust and competition laws, or potential issues from any regulatory authorities.

### **Comparable Company Analysis**

Horizon's management primarily relied upon a comparable company analysis to assess the value that the public markets would likely ascribe to Vivid Seats PubCo following the business combination and this analysis was presented to Horizon's board of directors. The relative valuation analysis was based on selected publicly-traded companies in each of the following sectors: (1) online marketplaces and (2) live event ticketing. The selected companies were chosen because they were determined by Horizon's management to be the most relevant in their particular sector (but, for the avoidance of doubt, each of the selected companies is not necessarily a direct competitor of Vivid Seats PubCo). The comparable companies Horizon's board of directors reviewed were:

#### *Online Market Places*

- **Match**, an online dating service with web sites serving over 50 countries in twelve languages;
- **ANGI Homeservices**, an online home services company;
- **Etsy**, an American e-commerce website focused on handmade or vintage items and craft supplies;

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- **Bumble Inc.**, an American social media company that operates the Bumble online dating application facilitating communication between interested users;
- **Airbnb, Inc.**, an online marketplace for lodging, homestays for vacation rentals and tourism activities;
- **DoorDash, Inc.**, an online food ordering and food delivery platform;
- **Farfetch**, a British-Portuguese online luxury fashion retail platform that sells products from over 700 boutiques and brands from around the world;
- **GoodRx**, an American healthcare company that operates a telemedicine platform and a free-to-use website and mobile application that track prescription drug prices in the United States and provide free drug coupons for discounts on medications; and
- **Poshmark**, a leading online social marketplace for new and secondhand style for women, men, kids, pets, home, and more.

### *Live Event Ticketing*

- **LiveNation**, an American events promoter and venue operator based in Beverly Hills, California; and
- **Eventbrite**, an American event management and ticketing website.

These companies were selected by Horizon as the companies with publicly available data having businesses with similar (or, in the case of margins and growth rates, similar or reasonably achievable) end markets, business models, go-to-market strategies, transaction volumes, margins and growth rates. While these companies may share certain characteristics that are similar to those of Vivid Seats PubCo, Horizon's board of directors recognized that no company was identical in nature to Vivid Seats PubCo.

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Using publicly available information, Horizon's management reviewed with Horizon's board of directors, among other things, the revenue year over year growth rate percentage with respect to each such selected comparable company over the period from 2022 (projected) through 2023 (projected), Adjusted EBITDA margin with respect to each such selected comparable company for the period ending 2023 (projected) and the sum of these two percentages with respect to each such selected comparable company. Adjusted EBITDA margin is Adjusted EBITDA divided by Revenue. These estimates are based on publicly available consensus research analysts' estimates and other publicly available information, all as of April 14, 2021. In addition, all estimates were calendarized to December year-ends. The percentages for the selected comparable companies are summarized in the table below:

<u>Selected Public Company</u>	<u>2022E-2023E Revenue YoY</u>	<u>2023E Adjusted EBITDA Margin</u>	<u>2023E Revenue Growth plus Adjusted EBITDA Margin</u>
<b>Online Marketplaces</b>			
Match	17.3%	42.6%	59.9%
ANGI Homeservices	20.6%	19.4%	40.0%
Etsy	23.1%	35.0%	58.1%
Bumble	21.9%	27.4%	49.3%
Airbnb	25.6%	15.3%	40.9%
Doordash	30.1%	11.8%	41.9%
Farfetch	34.6%	11.1%	45.7%
GoodRx	33.9%	36.1%	70.0%
Poshmark	30.8%	7.6%	38.4%
<b>Median</b>	<b>25.6%</b>	<b>19.4%</b>	<b>45.7%</b>
<b>Live Event Ticketing</b>			
Live Nation	21.0%	8.3%	29.3%
Eventbrite	22.9%	17.4%	40.3%
<b>Mean</b>	<b>22.0%</b>	<b>12.9%</b>	<b>34.8%</b>
<b>Vivid Seats(1)</b>	<b>14.4%</b>	<b>28.0%</b>	<b>42.4%</b>

(1) For further information and disclaimers regarding the unaudited projected financial information underlying these metrics, see "—Certain Forecasted Financial Information for Vivid Seats PubCo."

Based on the review of these selected comparable companies, Horizon's board of directors concluded that Vivid Seats PubCo's revenue year over year growth rate percentage over the period from 2022 (projected) through 2023 (projected), EBITDA margin with respect to each such selected comparable company for the period ending 2023 (projected) and the sum of these two percentages with respect to each such selected comparable company (each of which are shown in the table above) were attractive relative to the percentages of such selected comparable companies.

Using publicly available information, Horizon's management also reviewed with Horizon's board of directors, among other things, the enterprise values (defined as market capitalization plus net debt plus minority investments minus unconsolidated investments) as a multiple of Adjusted EBITDA for 2022 (projected) and 2023 (projected) with respect to each such selected comparable company. These estimates are based on publicly available consensus research analysts' estimates and other publicly available information, all as of April 14, 2021. In addition, all estimates were calendarized to December year-ends. The companies presented below may use differing definitions of Adjusted EBITDA. Furthermore, the definition of Adjusted EBITDA utilized by a comparable company may not reflect such entity's definition of Adjusted EBITDA for historical periods. For example, Horizon's board of directors considered a definition of Vivid Seats Adjusted EBITDA that reflects certain adjustments permissible under Vivid Seats' existing credit agreements that are not included in Vivid

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Seats' historical presentation of Adjusted EBITDA. Accordingly, the comparability of such information may be limited. The percentages for the selected comparable companies are summarized in the table below:

<u>Selected Public Company</u>	<u>Enterprise Value / 2022E Adjusted EBITDA</u>	<u>Enterprise Value / 2023E Adjusted EBITDA</u>
<b>Online Marketplaces</b>		
Match	34.1x	26.8x
ANGI Homeservices	30.6x	19.1x
Etsy	35.5x	26.3x
Bumble	54.0x	41.2x
Airbnb	158.8x	95.4x
Doordash	158.4x	71.0x
Farfetch	213.5x	52.6x
GoodRx	44.6x	31.0x
Poshmark	172.3x	74.7x
<b>Median</b>	<b>54.0x</b>	<b>41.2x</b>
<b>Live Event Ticketing</b>		
Live Nation	21.7x	17.8x
Eventbrite	53.4x	34.4x
<b>Mean</b>	<b>37.6x</b>	<b>26.1x</b>
<b>Vivid Seats(1)</b>	<b>18.7x</b>	<b>14.0x</b>

(1) For further information and disclaimers regarding the unaudited projected financial information underlying these metrics, see “—Certain Forecasted Financial Information for Vivid Seats PubCo.”

Using publicly available information, Horizon's management also reviewed with Horizon's board of directors, among other things, the enterprise values as a multiple of revenue for 2022 (projected) and 2023 (projected) with respect to each such selected comparable company. These estimates are based on publicly available consensus research analysts' estimates and other publicly available information, all as of April 14, 2021. In addition, all estimates were calendarized to December year-ends. The percentages for the selected comparable companies are summarized in the table below:

<u>Selected Public Company</u>	<u>Enterprise Value / 2022E Revenue</u>	<u>Enterprise Value / 2023E Revenue</u>
<b>Online Marketplaces</b>		
Match	13.4x	11.4x
ANGI Homeservices	4.5x	3.7x
Etsy	11.3x	9.2x
Bumble	13.8x	11.3x
Airbnb	18.3x	14.6x
Doordash	10.9x	8.4x
Farfetch	7.9x	5.9x
GoodRx	15.0x	11.2x
Poshmark	7.4x	5.7x
<b>Median</b>	<b>11.3x</b>	<b>9.2x</b>
<b>Live Event Ticketing</b>		
Live Nation	1.8x	1.5x
Eventbrite	7.3x	6.0x
<b>Mean</b>	<b>4.6x</b>	<b>3.7x</b>
<b>Vivid Seats(1)</b>	<b>4.5x</b>	<b>3.9x</b>

(1) For further information and disclaimers regarding the unaudited projected financial information underlying these metrics, see “—Certain Forecasted Financial Information for Vivid Seats PubCo.”

Based on the review of these selected comparable companies, Horizon's board of directors concluded that Vivid Seats PubCo's enterprise value as a multiple of Adjusted EBITDA and as a multiple of revenue for estimated calendar year 2022 and estimated calendar year 2023 (each of which are shown in the tables above), respectively, was an attractive valuation relative to the estimated calendar year enterprise values as a multiple of Adjusted EBITDA and as a multiple of revenue of such selected comparable companies.

Horizon's board of directors viewed Vivid Seats PubCo's enterprise value as a multiple of both revenue and Adjusted EBITDA as the most relevant valuation measures on which to evaluate Vivid Seats PubCo's value based on their belief that these multiples are the most prevalent and relevant metrics for the companies that operate in Vivid Seats PubCo's industry and adjacent sectors. The results of this analysis (as described above) supported Horizon's board of directors' determination, based on a number of factors, that the terms of the merger were fair to and in the best interests of Horizon and its stockholders.

#### *Certain Forecasted Financial Information for Vivid Seats PubCo*

**Vivid Seats PubCo does not as a matter of course publicly disclose long-term forecasts or internal projections of their future performance, revenue, earnings, financial condition or other results. However, Vivid Seats PubCo's senior management prepared and provided to Hoya Intermediate's board of directors, Vivid Seats' financial advisors and Horizon certain internal, unaudited prospective financial information in connection with the evaluation of the merger.** Vivid Seats PubCo's senior management prepared such financial information based on Vivid Seats PubCo's senior management's judgement and assumptions regarding the future financial performance of Vivid Seats PubCo. The inclusion of the below information should not be regarded as an indication that Vivid Seats PubCo or any other recipient of this information considered – or now considers – it to be necessarily predictive of actual future results.

The unaudited prospective financial information of Vivid Seats PubCo is subjective in many respects and is thus susceptible to multiple interpretations and periodic revisions based on actual experience and business developments. As a result, there can be no assurance that the prospective results will be realized or that actual results will not be significantly higher or lower than estimated. Since the unaudited prospective financial information covers multiple years, that information by its nature becomes less predictive with each successive year.

While presented in this proxy statement/prospectus/consent solicitation statement with numeric specificity, the information set forth in the summary below was based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of Vivid Seats PubCo's senior management, including, among other things, the matters described in the sections entitled "*Cautionary Note Regarding Forward-Looking Statements*," "*Risk Factors*" and "*Management's Discussion and Analysis of Financial Condition and Results of Operations of Vivid Seats*." Vivid Seats PubCo believes the assumptions in the prospective financial information were reasonable at the time the financial information was prepared, given the information Vivid Seats PubCo had at the time. However, important factors that may affect actual results and cause the results reflected in the prospective financial information not to be achieved include, among other things, risks and uncertainties relating to Vivid Seats PubCo's business, industry performance, the regulatory environment and general business and economic conditions. The prospective financial information also reflects assumptions as to certain business decisions that are subject to change. **The unaudited prospective financial information was not prepared with a view toward public disclosure or compliance with the published guidelines of the SEC, or the guidelines established by the American Institute of Certified Public Accountants for the preparation and presentation of financial forecasts but, in the view of Vivid Seats PubCo's management, such financial information was prepared on a reasonable basis, reflects the best currently available estimates and judgments, and presents, to the best of Vivid Seats PubCo's senior management's knowledge and belief, the expected course of action and the expected future financial performance of Vivid Seats PubCo. However, this information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this proxy statement/prospectus/consent solicitation statement are cautioned not to place undue reliance on the prospective financial information.**

No independent auditors have audited, reviewed, examined, compiled nor applied agreed-upon procedures with respect to the accompanying prospective financial information and, accordingly, none of Horizon, WithumSmith+Brown, PC, Horizon's independent registered public accounting firm, and Deloitte & Touche LLP, Vivid Seats PubCo's independent registered public accounting firm, express an opinion or any other form of assurance with respect thereto or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information. The audit reports included in this proxy statement/prospectus/consent solicitation statement relate to historical financial information. They do not extend to the prospective financial information and should not be read to do so.

EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE FEDERAL SECURITIES LAWS, NEITHER VIVID SEATS PUBCO NOR HORIZON INTENDS TO MAKE PUBLICLY AVAILABLE ANY UPDATE OR OTHER REVISION TO THE PROSPECTIVE FINANCIAL INFORMATION. THE PROSPECTIVE FINANCIAL INFORMATION DOES NOT TAKE INTO ACCOUNT ANY CIRCUMSTANCES OR EVENTS OCCURRING AFTER THE DATE THAT INFORMATION WAS PREPARED. READERS OF THIS PROXY STATEMENT/PROSPECTUS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE UNAUDITED PROSPECTIVE FINANCIAL INFORMATION SET FORTH BELOW AND NOT TO RELY ON SUCH FINANCIAL INFORMATION IN MAKING A DECISION REGARDING THE BUSINESS COMBINATION PROPOSAL, AS SUCH FINANCIAL INFORMATION MAY BE MATERIALLY DIFFERENT THAN ACTUAL RESULTS. NONE OF VIVID SEATS PUBCO, HORIZON NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, ADVISORS OR OTHER REPRESENTATIVES HAS MADE OR MAKES ANY REPRESENTATION TO ANY VIVID SEATS PUBCO STOCKHOLDER, HORIZON STOCKHOLDER OR ANY OTHER PERSON REGARDING ULTIMATE PERFORMANCE COMPARED TO THE INFORMATION CONTAINED IN THE PROSPECTIVE FINANCIAL INFORMATION OR THAT FINANCIAL AND OPERATING RESULTS WILL BE ACHIEVED. HORIZON DOES NOT INTEND TO REFERENCE THESE FINANCIAL PROJECTIONS IN ITS FUTURE PERIODIC REPORTS FILED UNDER THE EXCHANGE ACT.

Certain of the measures included in the prospective financial information may be considered non-GAAP financial measures. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with GAAP, and non-GAAP financial measures as used by Vivid Seats PubCo may not be comparable to similarly titled amounts used by other companies. Financial measures provided to a financial advisor in connection with a business combination transaction are excluded from the definition of non-GAAP financial measures and therefore are not subject to SEC rules regarding disclosures of non-GAAP financial measures, which would otherwise require a reconciliation of a non-GAAP financial measure to a GAAP financial measure. Accordingly, we have not provided a reconciliation of the financial measures.

The following table sets forth certain summarized prospective financial information regarding Vivid Seats PubCo for 2021, 2022, 2023 and 2024:

***Vivid Seats PubCo's Management Forecasted Financials***

<u>(in millions)</u>	<u>2021E</u>	<u>2022E</u>	<u>2023E</u>	<u>2024E</u>
<b>Gross Order Value(1)</b>	<b>\$ 781</b>	<b>\$2,364</b>	<b>\$2,728</b>	<b>\$3,090</b>
<i>YoY Growth</i>	<i>125%</i>	<i>203%</i>	<i>15%</i>	<i>13%</i>
<b>Adjusted Revenue(2)</b>	<b>\$ 168</b>	<b>\$ 459</b>	<b>\$ 525</b>	<b>\$ 591</b>
<i>YoY Growth</i>	<i>46%</i>	<i>173%</i>	<i>14%</i>	<i>13%</i>
<b>Adjusted EBITDA(2)</b>	<b>\$ 7</b>	<b>\$ 110</b>	<b>\$ 147</b>	<b>\$ 189</b>
<i>YoY Growth</i>	<i>40%</i>	<i>1471%</i>	<i>34%</i>	<i>29%</i>
<b>Free Cash Flow(3)</b>	<b>\$ 15</b>	<b>\$ 116</b>	<b>\$ 162</b>	<b>\$ 205</b>
<i>Free Cash Flow Conversion</i>	<i>NM%(4)</i>	<i>106%</i>	<i>110%</i>	<i>109%</i>

- (1) Gross order value represents the total transactional amount of marketplace orders placed on our platform in a given period, inclusive of fees and net of cancellations that occurred during that period.

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- (2) Adjusted Revenue and Adjusted EBITDA exclude the impact of cancellations and elevated chargebacks in fiscal years ended December 31, 2020 and 2021.
- (3) Free Cash Flow defined as Adjusted EBITDA less capital expenditures, plus change in net working capital.
- (4) “NM” — not meaningful.

This summarized prospective financial information reflects a combination of (1) uncertainty around the timing and trajectory of the return of live events with fans in attendance and (2) a continuation of historical trends upon the return of normalized market activity.

This prospective financial information was prepared early in the first quarter of 2021 when significant uncertainty surrounded the live event market. While distribution of the COVID-19 vaccine had begun, the pace and ultimate success of these efforts was unknown. Similarly, significant uncertainty remained with respect to the subsequent reaction from state and local officials and the timeframe under which substantial numbers of attendees would be able to attend live events.

Accordingly, Vivid Seats PubCo’s senior management assumed continued material impact to Vivid Seats PubCo’s business in the first and second quarters of 2021 in the forecasted financials followed by a measured return to normal activity. The forecasted financials assume that 2022 activity will approximate 2019 activity; as such, the prospective financial information reflects a ramp in the third and fourth quarters of 2021 from the severely COVID-impacted results experienced in 2020 and projected first half of 2021 to a normalized environment in 2022.

Vivid Seats PubCo’s management projects 2022 Revenue to be similar to 2019 levels and 2022 Adjusted EBITDA to be lower than 2019 Adjusted EBITDA to reflect additional planned marketing investment. The forecasted financials for 2023 and 2024 assume a resumption of overall market growth rates in the high single digits coupled with Vivid Seats PubCo outpacing market growth by amounts consistent with historical experience. Vivid Seats PubCo’s management did not assume any meaningful changes to the fundamental economics of its business. Adjusted EBITDA margins in 2023 approximate 2019 Adjusted EBITDA margins while 2024 Adjusted EBITDA margins exceed 2019, reflecting the benefits of operating leverage as Vivid Seats PubCo continues to grow, which is also consistent with historical trends. Vivid Seats included projections through 2024 to provide potential investors with multiple years of projected performance upon the return of a normalized ticketing environment.

The following table sets forth key financial metrics utilized by Vivid Seats PubCo’s management in preparing forecasted financials for 2021, 2022, 2023 and 2024:

### ***Vivid Seats PubCo’s Key Metrics***

	2019	2020	2021E	2022E	2023E	2024E
<b>Marketplace GOV (1) (in millions)</b>	\$2,280	\$ 347	\$ 781	\$2,364	\$2,728	\$3,090
<b>Total Marketplace Orders (2) (in thousands)</b>	7,185	1,066	2,401	7,292	8,366	9,422
<b>Average Order Size (3) (in whole dollars)</b>	\$ 317	\$ 326	\$ 325	\$ 324	\$ 326	\$ 328
<b>Marketing &amp; Loyalty Spending (4) (in millions)</b>	\$ 177	\$ 41	\$ 83	\$ 219	\$ 237	\$ 253

- (1) Marketplace Gross Order Value (“Marketplace GOV”) represents the total transactional amount of Marketplace segment orders placed on our platform in a period, inclusive of fees, exclusive of taxes, and net of event cancellations that occurred during that period.
- (2) Total Marketplace orders represents the volume of Marketplace segment orders placed on our platform during a period, net of event cancellations that occurred during that period.
- (3) Average Order Size represents Marketplace GOV divided by Total Marketplace orders.
- (4) Marketing & Loyalty spending consists of Marketing and selling expenses, in addition to customer loyalty costs and adjustments to outstanding customer credit balances, which are classified as Revenues in our



Consolidated Statement of Operations and Comprehensive Loss. During the years ended December 31, 2019 and 2020, customer loyalty costs and adjustments to outstanding customer credit balances amounted to a benefit of \$1 million and contra-revenue of \$3 million, respectively.

The projected values 2021, 2022, 2023 and 2024 are based on a conservative assumption that average order size will experience only minimum growth throughout the forecast, while projecting that gross order value and total orders return to 2019 levels in 2022 supported by increased investment in marketing and loyalty spending.

### **Interests of Certain Persons in the Business Combination**

#### *Horizon – Interest of Certain Persons*

In considering the recommendation of Horizon's board of directors to vote in favor of the business combination, shareholders should be aware that, aside from their interests as shareholders, Sponsor and certain of Horizon's directors and officers have interests in the business combination that are different from, or in addition to, those of other shareholders generally. Horizon's directors were aware of and considered these interests, among other matters, in evaluating the business combination, and in recommending to shareholders that they approve the business combination. Shareholders should take these interests into account in deciding whether to approve the business combination. These interests include, among other things:

- the fact that Sponsor has agreed not to redeem any Horizon Class A ordinary shares held by it in connection with a shareholder vote to approve a proposed initial transaction;
- the fact that Sponsor paid an aggregate of \$155 million for 15,500,000 Horizon Class A ordinary shares (after giving effect to forfeitures in connection with the underwriters' over-allotment option being reduced or not exercised) (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$155 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$25,000 for 13,599,608 Horizon Class B ordinary shares (after giving effect to forfeitures in connection with the underwriters' over-allotment option being reduced or not exercised) (the "Sponsor Shares") (none of which were transferred to Horizon's independent directors and none of which were transferred to Horizon's strategic advisors) and such securities may have a higher value at the time of the business combination, estimated at approximately \$136 million based on the closing price of \$10.00 per public share on the NYSE on June 28, 2021;
- the fact that Sponsor paid an aggregate of \$9.78 million for the 6,519,791 Horizon IPO Private Placement Warrants currently owned by Sponsor, and such warrants will expire worthless if a transaction is not consummated by August 25, 2022; the warrants held by our Sponsor had an aggregate market value of approximately \$11,605,228 based upon the closing price of \$1.78 per warrant on the NYSE on June 28, 2021;
- the fact that Sponsor and Horizon's other current officers and directors have agreed to waive their rights to liquidating distributions from the Trust Account with respect to any Sponsor Shares held by them if Horizon fails to complete an initial transaction by August 25, 2022;
- the fact that the Registration Rights Agreement will be entered into by Horizon;
- the fact that, at the option of Sponsor, any amounts outstanding under any loan made by Sponsor or any of its affiliates to Horizon in an aggregate amount of up to \$1,500,000 may be converted into warrants to purchase Vivid Seats Class A common stock in connection with the consummation of the business combination;
- the right of Sponsor to hold shares of Vivid Seats PubCo Class A common stock, as well as Vivid Seats PubCo Warrants, following the business combination, subject to certain lock-up periods;

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- the continued indemnification of Horizon’s existing directors and officers and the continuation of Horizon’s directors’ and officers’ liability insurance after the business combination (*i.e.*, a “tail policy”);
- the fact that Sponsor and Horizon’s officers and directors will not be reimbursed for any out-of-pocket expenses (estimated at \$0 as of June 28, 2021) if an initial transaction is not consummated by August 25, 2022;
- the fact that if the Trust Account is liquidated, including in the event Horizon is unable to complete an initial transaction by August 25, 2022, Sponsor has agreed to indemnify Horizon to ensure that the proceeds in the Trust Account are not reduced below \$10.00 per public share, or such lesser per public share amount as is in the Trust Account on the liquidation date, by the claims of prospective target businesses with which Horizon has entered into an acquisition agreement or claims of any third party for services rendered or products sold to Horizon, but only if such a vendor or target business has not executed a waiver of any and all rights to seek access to the Trust Account;
- the fact that Horizon may be entitled to distribute or pay over funds held by Horizon outside the Trust Account to Sponsor or any of its affiliates prior to the Closing;
- the fact that Hoya Intermediate shall pay Sponsor \$11.7 million in cash at Closing in consideration for the Sponsor Backstop Commitment;
- the fact that Sponsor can earn a positive return on its investment even if other Horizon shareholders experience a negative return given the potential option value for the new warrants; and
- the fact that Sponsor will enter into the Exchange Agreement, pursuant to which all Horizon Class B ordinary shares will be exchanged for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth in the Exchange Agreement.

### *Hoya Intermediate – Interests of Certain Persons*

Hoya Intermediate is a manager-managed limited liability company, with Hoya Topco serving as the sole manager, and as such does not have any directors. Its officers are Stanley Chia, its chief executive officer and president, and Lawrence Fey, its chief financial officer. Hoya Intermediate’s officers have certain interests in the business combination that are described in this proxy statement/prospectus/consent solicitation statement, including, among other things: ownership interests in Hoya Topco as described in the section entitled “Beneficial Ownership of Securities” and executive compensation as described in the section entitled “Executive Compensation.” Following the Transactions, the business affairs of Hoya Intermediate will be controlled by a board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco.

### **Potential Purchases of Public Shares**

In connection with the shareholder vote to approve the business combination, Sponsor and Horizon’s directors, officers, or advisors or their respective affiliates may privately negotiate transactions to purchase shares from shareholders who would have otherwise elected to have their shares redeemed in conjunction with a proxy solicitation pursuant to the proxy rules for a per share pro rata portion of the Trust Account. None of Sponsor or Horizon’s directors, officers or advisors or their respective affiliates will make any such purchases when they are in possession of any material non-public information not disclosed to the seller or during a restricted period under Regulation M under the Exchange Act. Such a purchase would include a contractual acknowledgement that such shareholder, although still the record holder of Horizon’s shares is no longer the beneficial owner thereof and therefore agrees not to exercise its redemption rights, and would include a contractual provision that directs such

shareholder to vote such shares in a manner directed by the purchaser. In the event that Sponsor or Horizon's directors, officers or advisors or their respective affiliates purchase shares in privately negotiated transactions from public shareholders who have already elected to exercise their redemption rights, such selling shareholders would be required to revoke their prior elections to redeem their shares. Any such privately negotiated purchases may be effected at purchase prices that are in excess of the per share pro rata portion of the Trust Account.

The purpose of such purchases would be to increase the likelihood of obtaining shareholder approval of the business combination or, where the purchases are made by Sponsor or Horizon's directors, officers or advisors or their respective affiliates, to satisfy a closing condition in an agreement related to the business combination.

### **Ownership of Vivid Seats PubCo following the Business Combination**

It is anticipated that, upon completion of the business combination and assuming no redemptions of Horizon Class A ordinary shares in connection with the business combination, Vivid Seats PubCo's ownership will be as follows: (1) Horizon public shareholders will own approximately 19.9% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (2) the PIPE Investors (as defined herein), excluding Sponsor and certain affiliates of the Sponsor, will own approximately 1.8% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); (3) Sponsor, together with certain of its affiliates, will own (i) approximately 17.7% (assuming no exercise of Vivid Seats PubCo Warrants held by Sponsor) or (ii) approximately 29.9% (assuming full exercise of Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (each as defined herein) held by Sponsor), of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class A common stock); and (4) Hoya Topco will own approximately 60.6% of Vivid Seats PubCo's outstanding common stock (which will be in the form of shares of Vivid Seats Class B common stock). As a result of the voting power controlled by Hoya Topco, following the business combination, Vivid Seats PubCo will qualify as a "controlled company" within the meaning of applicable Nasdaq listing rules. The board of managers of Hoya Topco is controlled by our Private Equity Owner and its affiliates, and consequently the Private Equity Owner will, for so long as it controls Hoya Topco, control the vote of all matters submitted to a vote of Vivid Seats PubCo's shareholders through Hoya Topco's ownership of approximately 60.6% of the voting power of Vivid Seats PubCo's outstanding common stock following the business combination. In addition to its voting power, the Private Equity Owner, for so long as it controls Hoya Topco, will be entitled to nominate five (5) directors to the Vivid Seats Board pursuant to the Stockholders' Agreement. In turn, Vivid Seats PubCo will indirectly hold approximately 39.4% of the Intermediate Common Units and Hoya Topco will hold approximately 60.6% of the Intermediate Common Units, which interests will be controlled by the Private Equity Owner for so long as it controls Hoya Topco. These levels of ownership interest assume that no shares are elected to be redeemed in connection with the business combination. The PIPE Investors have agreed to purchase 22,500,000 shares of Vivid Seats Class A common stock at \$10.00 per share for an aggregate commitment amount of \$225.0 million, in the PIPE Subscription. In this proxy statement/prospectus/consent solicitation statement, we assume that approximately \$769.0 million of the gross proceeds from the PIPE Subscription and funds held in the Trust Account will be used to fund (i) the business combination, (ii) the partial repayment of our Term Loan Facilities to a net debt amount (consisting of long-term debt, less cash and cash equivalents) of approximately \$132.1 million under both the no redemption scenario and maximum redemption scenario, and (iii) the payment of certain transaction expenses. The ownership percentage with respect to Vivid Seats PubCo does not take into account (1) warrants to purchase Vivid Seats Class A common stock that will remain outstanding immediately following the business combination or warrants to purchase Vivid Seats Class B common stock issued in connection with the business combination or (2) the issuance of any shares upon completion of the business combination under the 2021 Plan, but does include founder shares, which will automatically convert into shares of Vivid Seats Class A common stock on a one-for-one basis upon the consummation of the business combination (such shares of Vivid Seats Class A common stock will be subject to transfer restrictions). If the actual facts are different from these assumptions, the above levels of ownership interest will be different.

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You should read “Summary of the Proxy Statement/Prospectus/Consent Solicitation Statement — Impact of the Business Combination on Vivid Seats PubCo’s Public Float” and “Unaudited Pro Forma Condensed Combined Financial Information” for further information.

### Sources and Uses for the Business Combination

The following table summarizes the sources and uses for funding the business combination. These figures assume that no holders of Horizon Class A ordinary shares exercise their redemption rights in connection with the business combination. If the actual facts are different from these assumptions, the below figures will be different.

<u>Sources</u> <u>(\$ in millions)</u>		<u>Uses</u>	
Cash and investments held in Trust Account <sup>1</sup> (\$155 held by Sponsor)	\$ 544	Cash to seller	\$ —
Private Placement (including Sponsor co-investment)	225	Cash to pay down debt	677
Equity rollover	1,182	Equity rollover	1,182
		First lien breakage costs	33
		Transaction fees and expenses	59
<b>Total sources</b>	<b><u>\$1,951</u></b>	<b>Total uses</b>	<b><u>\$1,951</u></b>

(1) Reflects cash and investments held in the Trust Account as of March 31, 2021. Excludes interest earned in the Trust Account.

### Board of Directors of Vivid Seats PubCo Following the Business Combination

Upon the Closing, the board of Vivid Seats PubCo will be chaired by \_\_\_\_\_ and will include \_\_\_\_\_, at least three of whom will be independent.

Upon completion of the business combination, the Private Equity Owner will control a majority of the combined voting power of all classes of Vivid Seats PubCo’s outstanding voting shares and will have the ability to influence the election of the Vivid Seats Board. As a result, Vivid Seats PubCo expects to be a controlled company within the meaning of the Nasdaq corporate governance standards, and may elect not to comply with certain Nasdaq corporate governance requirements, including the requirements that a majority of the board of directors consist of independent directors and that the nominating and governance committee and compensation committee be composed entirely of independent directors. These requirements will not apply to Vivid Seats PubCo as long as it remains a controlled company.

### Redemption Rights

Under Horizon’s amended and restated memorandum and articles of association, holders of public shares may elect to have their shares redeemed for cash at the applicable redemption price per share calculated in accordance with Horizon’s amended and restated memorandum and articles of association. As of December 31, 2020, this would have amounted to approximately \$10.00 per share. If a holder exercises its redemption rights, then such holder will be exchanging its Horizon Class A ordinary shares for cash and will no longer own shares of Horizon. Such a holder will be entitled to receive cash for its public shares only if it properly demands redemption and

delivers its shares (either physically or electronically) to Horizon's transfer agent in accordance with the procedures described herein. Notwithstanding the foregoing, a holder of the public shares, together with any affiliate of his or any other person with whom he is acting in concert or as a "group" (as defined in Section 13(d)(3) of the Exchange Act), will be restricted from seeking redemption rights with respect to more than 15% of the Horizon Class A ordinary shares included in the units sold in the IPO, which are referred to as the "15% threshold." Accordingly, all public shares in excess of the 15% threshold beneficially owned by a public shareholder or group will not be redeemed for cash. Each redemption of Horizon Class A ordinary shares by Horizon's public shareholders will decrease the amount in the Trust Account, which holds approximately \$544 million as of December 31, 2020. In no event will Horizon redeem public shares in an amount that would cause its net tangible assets to be less than \$5,000,001. See the section entitled "Extraordinary General Meeting of Horizon Shareholders — Redemption Rights" for the procedures to be followed if you wish to redeem your shares for cash.

### **Appraisal Rights**

Under Section 239 of the CICA, the holders of Horizon public shares will not have appraisal or dissenter rights in connection with the business combination. Holders of public shares should consult their Cayman Islands legal counsel regarding their rights under the CICA.

### **Accounting Treatment**

The business combination will be accounted for as a reverse recapitalization in accordance with GAAP. Under this method of accounting, Vivid Seats PubCo has been treated as the "acquired" company for financial reporting purposes. This determination was primarily based on Hoya Intermediate having a relative majority of the voting power of the combined company, the operations of Hoya Intermediate and its subsidiaries constituting the only ongoing operations of the combined company, and senior management of Hoya Intermediate comprising the majority of the senior management of the combined company.

Accordingly, for accounting purposes, the financial statements of the combined company will represent a continuation of the financial statements of Hoya Intermediate. The net assets of Vivid Seats PubCo will be stated at historical cost, with no goodwill or other intangible assets recorded.

### **U.S. Federal Income Tax Considerations**

The following discussion is a discussion of material U.S. federal income tax considerations applicable to holders of Horizon's public shares or Horizon IPO Public Warrants (other than the Sponsor, directors, or any of their respective affiliates) as a consequence of (i) the Merger, (ii) the exercise of redemption rights, (iii) the adoption of the Warrant Amendment and (iv) the ownership and disposition of shares of Vivid Seats Class A common stock and Vivid Seats PubCo Warrants after the Merger. This section applies only to investors that hold their public shares or Horizon IPO Public Warrants, and that will hold their Vivid Seats Class A common stock or Vivid Seats PubCo Warrants, as capital assets for U.S. federal income tax purposes (generally, property held for investment). This discussion does not discuss all aspects of U.S. federal income taxation that may be relevant to particular holders in light of their particular circumstances or status including:

- financial institutions or financial services entities;
- broker-dealers;
- S corporations;
- taxpayers that are subject to the mark-to-market accounting rules;
- tax-exempt entities;

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- governments or agencies or instrumentalities thereof;
- insurance companies;
- regulated investment companies or real estate investment trusts;
- expatriates or former long-term residents of the United States;
- persons that actually or constructively own five percent or more of Horizon's voting shares or five percent or more of the total value of all classes of Horizon's shares (except as specifically addressed below);
- persons that acquired Horizon's securities pursuant to an exercise of employee share options, in connection with employee share incentive plans or otherwise as compensation;
- persons that hold Horizon's securities as part of a straddle, constructive sale, hedging, conversion or other integrated or similar transaction;
- persons subject to the alternative minimum tax;
- persons whose functional currency is not the U.S. dollar;
- controlled foreign corporations;
- persons that purchase public shares as part of the PIPE financing;
- accrual method taxpayers that file applicable financial statements as described in Section 451(b) of the Code; or
- passive foreign investment companies.

This discussion is based on current U.S. federal income tax law as in effect on the date hereof, which is subject to change, possibly on a retroactive basis, which may affect the U.S. federal income tax consequences described herein. Furthermore, this discussion does not address any aspect of U.S. federal non-income tax laws, such as gift, estate or Medicare contribution tax laws, or state, local or non-U.S. tax laws. In addition, this discussion does not address any tax consequences to investors that directly or indirectly hold equity interests in Hoya Intermediate prior to the business combination, including holders of Horizon's public shares or Horizon IPO Public Warrants that also hold, directly or indirectly, equity interests in Hoya Intermediate. With respect to the consequences of holding shares of Vivid Seats Class A common stock and Vivid Seats PubCo Warrants, this discussion is limited to holders that acquire such shares of Vivid Seats Class A common stock in connection with the Merger or as a result of the exercise of a Vivid Seats PubCo Warrant, and holders that acquire such Vivid Seats PubCo Warrants in connection with the Merger. Horizon has not sought, and neither Horizon nor Vivid Seats PubCo will seek, a ruling from the U.S. Internal Revenue Service ("IRS") as to any U.S. federal income tax consideration described herein. The IRS may disagree with the discussion herein, and its determination may be upheld by a court. Moreover, there can be no assurance that future legislation, regulations, administrative rulings or court decisions will not adversely affect the accuracy of the statements in this discussion.

This discussion does not consider the U.S. federal income tax treatment of partnerships or other pass-through entities or persons that hold Horizon's securities or Vivid Seats securities through such entities. If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is the beneficial owner of Horizon's public shares or Horizon IPO Public Warrants, or the Vivid Seats Class A common stock or Vivid Seats PubCo Warrants, the U.S. federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partner and the partnership. If you are a partner of a partnership holding Horizon's public shares or Horizon IPO Public Warrants, or that will hold Vivid Seats Class A common stock or Vivid Seats PubCo Warrants, Horizon urges you to consult your tax advisor.

**THE FOLLOWING IS FOR INFORMATIONAL PURPOSES ONLY. EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR WITH RESPECT TO THE PARTICULAR TAX CONSEQUENCES TO SUCH HOLDER OF THE MERGER, THE EXERCISE OF REDEMPTION RIGHTS, THE ADOPTION**

**OF THE WARRANT AMENDMENT AND THE OWNERSHIP AND DISPOSITION OF SHARES OF VIVID SEATS CLASS A COMMON STOCK AND VIVID SEATS PUBCO WARRANTS, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. TAX LAWS.**

For purposes of this discussion, because any unit consisting of one public share and one-third of one Horizon IPO Public Warrant, with a whole Horizon IPO Public Warrant representing the right to acquire one public share is separable at the option of the holder, Horizon is treating any public share and one-third of one Horizon IPO Public Warrant to acquire one public share held by a holder in the form of a single unit as separate instruments and is assuming that the unit itself will not be treated as an integrated instrument. Accordingly, the separation of the units into their constituent parts should not be a taxable event for U.S. federal income tax purposes. This position is not free from doubt, and no assurance can be given that the IRS would not assert, or that a court would not sustain, a contrary position.

***U.S. Holders***

As used herein, a “U.S. Holder” is a beneficial owner of Horizon’s public shares or Horizon IPO Public Warrants or Vivid Seats Class A common stock or Vivid Seats PubCo Warrants, as applicable, and is, for U.S. federal income tax purposes:

- an individual citizen or resident of the United States;
- a corporation (or other entity that is treated as a corporation for U.S. federal income tax purposes) that is created or organized (or treated as created or organized) in or under the laws of the United States or any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust if (i) a U.S. court can exercise primary supervision over the administration of such trust and one or more United States persons (within the meaning of the Code) have the authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a United States person.

***Effects of the Merger on U.S. Holders***

Subject to the limitations set forth above under “U.S. Federal Income Tax Considerations”, the discussion in this section entitled “U.S. Federal Income Tax Considerations — U.S. Holders — Effects of the Merger on U.S. Holders” constitutes the opinion of Kirkland as to the material U.S. federal income tax consequences of the Merger to U.S. Holders.

The U.S. federal income tax consequences of the Merger will depend primarily upon whether the Merger qualifies as a “reorganization” within the meaning of Section 368 of the Code.

Under Section 368(a)(1)(F) of the Code, a reorganization is a “mere change in identity, form, or place of organization of one corporation, however effected” (an “F Reorganization”). Pursuant to the Merger, there will be a change in Horizon’s identity and place of organization, but each public share and Horizon IPO Public Warrant will be converted into one share of Vivid Seats Class A common stock or one Vivid Seats PubCo Warrant, respectively. Thus, the Merger should qualify as an F Reorganization. However, due to the absence of direct guidance, these results are not entirely clear. Accordingly, due to the absence of such guidance, it is not possible to predict whether the IRS or a court considering the issue would take a contrary position.

In the event that the Merger qualifies as an F Reorganization, U.S. Holders of public shares or Horizon IPO Public Warrants should not recognize gain or loss for U.S. federal income tax purposes as a result of the Merger, except as provided under “ — Effects of Section 367(b) to U.S. Holders” and “ — PFIC Considerations,” and the Merger should be treated for U.S. federal income tax purposes as if Horizon (i) transferred all of its assets and liabilities to a newly formed corporation in exchange for all of the outstanding common stock and warrants of

such newly formed corporation; and then (ii) distributed the stock and warrants of such newly formed corporation to the shareholders and warrant holders of Horizon in liquidation of Horizon. The taxable year of Horizon should be deemed to end on the date of the Merger.

If the Merger qualifies as an F Reorganization, subject to the PFIC rules discussed below: (i) a U.S. Holder's tax basis in a share of Vivid Seats Class A common stock or Vivid Seats PubCo warrant received in the Merger should be the same as its tax basis in the public share or Horizon IPO Public Warrant surrendered in exchange therefor, increased by any amount included in the income of such U.S. Holder under Section 367(b) of the Code (as discussed below), and (ii) the holding period for a share or warrant received in the Merger should include such U.S. Holder's holding period for the public share or Horizon IPO Public Warrant surrendered in exchange therefor.

If the Merger fails to qualify as an F Reorganization, subject to the PFIC rules discussed below, a U.S. Holder should recognize gain or loss with respect to a public share or Horizon IPO Public Warrant in an amount equal to the difference, if any, between the fair market value of the corresponding share or warrant received in the Merger and the U.S. Holder's adjusted tax basis in its public share or Horizon IPO Public Warrant surrendered in exchange therefor. In such event, such U.S. Holder's basis in the share or warrant received in the Merger would be equal to the fair market value of that public share or Horizon IPO Public Warrant on the date of the Merger, and such U.S. Holder's holding period for share or warrant received in the Merger would begin on the day following the date of the Merger.

Because the Merger will occur prior to the redemption of U.S. Holders that exercise redemption rights with respect to Horizon's public shares, U.S. Holders exercising such redemption rights will be subject to the potential tax consequences of the Merger. All U.S. Holders considering exercising redemption rights with respect to their public shares are urged to consult with their tax advisors with respect to the potential tax consequences to them of the Merger and exercise of redemption rights.

#### *Effects of Section 367(b) to U.S. Holders*

Section 367(b) of the Code applies to certain transactions involving foreign corporations, including an inbound merger of a foreign corporation in an F Reorganization. Section 367(b) of the Code imposes U.S. federal income tax on certain U.S. persons in connection with transactions that would otherwise qualify as a "reorganization" within the meaning of Section 368 of the Code. Section 367(b) of the Code will generally apply to U.S. Holders on the date of the Merger. Because the Merger will occur prior to the redemption of U.S. Holders that exercise redemption rights with respect to Horizon's public shares, U.S. Holders exercising such redemption rights will be subject to the potential tax consequences of Section 367(b) of the Code as a result of the Merger.

Because of the inherently factual nature of the tests under the applicable Treasury Regulations to determine the applicability of Section 367(b) of the Code to any particular U.S. Holder, and the fact that these tests are generally applied based on the relevant facts at the time of the completion of the Merger, Kirkland is unable to opine on the application of Section 367(b) of the Code to a U.S. Holder.

#### *A. U.S. Holders That Hold 10 Percent or More of Horizon*

A U.S. Holder that on the date of the Merger beneficially owns (actually or constructively) 10% or more of the total combined voting power of all classes of Horizon stock entitled to vote or 10% or more of the total value of all classes of Horizon stock (a "U.S. Shareholder") must include in income as a dividend the "all earnings and profits amount" attributable to the public shares it directly owns, within the meaning of Treasury Regulations under Section 367(b) of the Code. A U.S. Holder's ownership of Horizon IPO Public Warrants will be taken into account in determining whether such U.S. Holder is a U.S. Shareholder. Complex attribution rules apply in determining whether a U.S. Holder is a U.S. Shareholder, and all U.S. Holders are urged to consult their tax advisors with respect to these attribution rules.

A U.S. Shareholder's "all earnings and profits amount" with respect to its public shares is the net positive earnings and profits of Horizon (as determined under Treasury Regulations under Section 367 of the Code)



attributable to such public shares (as determined under Treasury Regulations under Section 367 of the Code) but without regard to any gain that would be realized on a sale or exchange of such public shares. Treasury Regulations under Section 367 provide that the all earnings and profits amount attributable to a shareholder's stock is determined according to the principles of Section 1248 of the Code and the Treasury Regulations thereunder. In general, Section 1248 of the Code and the Treasury Regulations thereunder provide that the amount of earnings and profits attributable to a block of stock (as defined in Treasury Regulations under Section 1248 of the Code) in a foreign corporation is the ratably allocated portion of the foreign corporation's earnings and profits generated during the period the shareholder held the block of stock.

Horizon does not expect to have significant cumulative earnings and profits through the date of the Merger. If Horizon's cumulative earnings and profits through the date of the Merger are less than or equal to zero, then a U.S. Holder should not be required to include in gross income an "all earnings and profits amount" with respect to its public shares. If Horizon's cumulative net earnings and profits are greater than zero through the date of the Merger, a U.S. Shareholder would be required to include its "all earnings and profits amount" in income as a deemed dividend under Treasury Regulations under Section 367(b) of the Code as a result of the Merger. Any such U.S. Holder that is a corporation may, under certain circumstances, effectively be exempt from taxation on a portion or all of the deemed dividend pursuant to Section 245A of the Code (commonly referred to as the participation exemption). Such U.S. Holders that are corporate shareholders should consult their own tax advisors as to the applicability of Section 245A of the Code in their particular circumstances.

#### *B. U.S. Holders That Own Less Than 10 Percent of Horizon*

A U.S. Holder that, on the date of the Merger, beneficially owns (actually and constructively) public shares with a fair market value of \$50,000 or more, but is not a U.S. Shareholder, will recognize gain (but not loss) with respect to the Merger or, in the alternative, may elect to recognize the "all earnings and profits amount" attributable to such U.S. Holder as described below.

Unless a U.S. Holder makes the election described below, such U.S. Holder generally must recognize gain (but not loss) with respect to shares deemed received in the Merger in an amount equal to the excess of the fair market value of such shares over the U.S. Holder's adjusted tax basis in the public shares deemed surrendered in exchange therefor.

In lieu of recognizing any gain as described in the preceding paragraph, a U.S. Holder may elect to include in income the "all earnings and profits amount" attributable to its public shares under Section 367(b) of the Code.

There are, however, strict conditions for making this election. This election must comply with applicable Treasury Regulations and generally must include, among other things:

- (i) a statement that the Merger is a Section 367(b) exchange (within the meaning of the applicable Treasury Regulations);
- (ii) a complete description of the Merger;
- (iii) a description of any stock, securities or other consideration transferred or received in the Merger;
- (iv) a statement describing the amounts required to be taken into account for U.S. federal income tax purposes;
- (v) a statement that the U.S. Holder is making the election including (A) a copy of the information that the U.S. Holder received from Horizon establishing and substantiating the U.S. Holder's "all earnings and profits amount" with respect to the U.S. Holder's public shares and (B) a representation that the U.S. Holder has notified Horizon (or Vivid Seats PubCo) that the U.S. Holder is making the election; and
- (vi) certain other information required to be furnished with the U.S. Holder's tax return or otherwise furnished pursuant to the Code or the Treasury Regulations.

In addition, the election must be attached by an electing U.S. Holder to such U.S. Holder's timely filed U.S. federal income tax return for the taxable period in which the Merger occurs, and the U.S. Holder must send

notice of making the election to Vivid Seats PubCo no later than the date such tax return is filed. In connection with this election, Horizon intends to provide each U.S. Holder eligible to make such an election with information regarding Horizon's earnings and profits upon written request.

Horizon does not expect to have significant cumulative earnings and profits through the date of the Merger. However, as noted above, if it were determined that Horizon had positive earnings and profits through the date of the Merger, a U.S. Holder that makes the election described herein could have an "all earnings and profits amount" with respect to its public shares, and thus could be required to include that amount in income as a deemed dividend under applicable Treasury Regulations as a result of the Merger.

**EACH U.S. HOLDER IS URGED TO CONSULT ITS TAX ADVISOR REGARDING THE CONSEQUENCES TO IT OF MAKING THE ELECTION DESCRIBED HEREIN AND THE APPROPRIATE FILING REQUIREMENTS WITH RESPECT TO SUCH ELECTION.**

*C. U.S. Holders that Own Public Shares with a Fair Market Value of Less Than \$50,000*

A U.S. Holder that, on the date of the Merger, beneficially owns (actually and constructively) public shares with a fair market value less than \$50,000 generally should not be required to recognize any gain or loss under Section 367(b) of the Code in connection with the Merger, and generally should not be required to include any part of the "all earnings and profits amount" in income.

*D. Tax Consequences for U.S. Holders of Horizon IPO Public Warrants*

Subject to the considerations described above relating to a U.S. Holder's ownership of Horizon IPO Public Warrants being taken into account in determining whether such U.S. Holder is a U.S. Shareholder for purposes of Section 367(b) of the Code, and the considerations described below relating to PFIC considerations, a U.S. Holder of Horizon IPO Public Warrants should not be subject to U.S. federal income tax with respect to the deemed exchange of Horizon IPO Public Warrants for newly issued warrants in the Merger.

**ALL U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE EFFECT OF SECTION 367(b) OF THE CODE TO THEIR PARTICULAR CIRCUMSTANCES.**

*PFIC Considerations*

In addition to the discussion under "— Effects of Section 367(b) to U.S. Holders," the Merger could be a taxable event to U.S. Holders under the PFIC provisions of the Code.

*A. Definition of a PFIC*

A foreign (i.e., non-U.S.) corporation will be classified as a PFIC for U.S. federal income tax purposes if either (i) at least 75% of its gross income in a taxable year, including its pro rata share of the gross income of any corporation in which it is considered to own at least 25% of the shares by value, is passive income or (ii) at least 50% of its assets in a taxable year (ordinarily determined based on fair market value and averaged quarterly over the year), including its pro rata share of the assets of any corporation in which it is considered to own at least 25% of the shares by value, are held for the production of, or produce, passive income. Passive income generally includes dividends, interest, rents and royalties (other than rents or royalties derived from the active conduct of a trade or business) and gains from the disposition of passive assets. For purposes of these rules, which may apply to Horizon prior to the Merger, interest income earned by Horizon would be considered passive income and cash held by Horizon would be considered a passive asset.

*B. PFIC Status of Horizon*

Because Horizon is a blank check company with no current active business, based upon the composition of its income and assets, and upon a review of its financial statements, Horizon believes that it likely was a PFIC for its most recent taxable year ended on December 31, 2020 and likely will be considered a PFIC for its current taxable year which will end as a result of the Merger.

*C. Effects of PFIC Rules on the Merger*

As discussed above, Horizon believes that it is likely classified as a PFIC for U.S. federal income tax purposes.

Section 1291(f) of the Code requires that, to the extent provided in Treasury Regulations, a United States person that disposes of stock of a PFIC recognizes gain notwithstanding any other provision of the Code. No final Treasury Regulations are currently in effect under Section 1291(f) of the Code. However, proposed Treasury Regulations under Section 1291(f) of the Code have been promulgated with a retroactive effective date. If finalized in their current form, those proposed Treasury Regulations may require gain recognition to U.S. Holders of public shares and Horizon IPO Public Warrants upon the Merger if (i) Horizon were classified as a PFIC at any time during such U.S. Holder's holding period for such public shares or Horizon IPO Public Warrants and (ii) the U.S. Holder had not timely made (a) a QEF Election (as described below) for the first taxable year in which the U.S. Holder owned such public shares or in which Horizon was a PFIC, whichever is later, or (b) a mark-to-market election (as described below) with respect to such public shares. Generally, a QEF election is not available with respect to the Horizon IPO Public Warrants, and although there is uncertainty under the current rules, a mark-to-market election likely is not available with respect to the Horizon IPO Public Warrants. The tax on any such recognized gain would be imposed based on a complex set of computational rules.

Under these rules:

- the U.S. Holder's gain will be allocated ratably over the U.S. Holder's holding period for such U.S. Holder's public shares or Horizon IPO Public Warrants;
- the amount of gain allocated to the U.S. Holder's taxable year in which the U.S. Holder recognized the gain, or to the period in the U.S. Holder's holding period before the first day of the first taxable year in which Horizon was a PFIC, will be taxed as ordinary income;
- the amount of gain allocated to other taxable years (or portions thereof) of the U.S. Holder and included in such U.S. Holder's holding period would be taxed at the highest tax rate in effect for that year and applicable to the U.S. Holder; and
- an additional tax equal to the interest charge generally applicable to underpayments of tax will be imposed on the U.S. Holder in respect of the tax attributable to each such other taxable year of such U.S. Holder.

In addition, the proposed Treasury Regulations provide coordinating rules with Section 367(b) of the Code, whereby, if the gain recognition rule of the proposed Treasury Regulations under Section 1291(f) of the Code applies to a disposition of PFIC stock that results from a transfer with respect to which Section 367(b) of the Code requires the shareholder to recognize gain or include an amount in income as discussed under “ — Effects of Section 367(b) to U.S. Holders,” the gain realized on the transfer is taxable under the PFIC rules discussed above, and the excess, if any, of the amount to be included in income under Section 367(b) of the Code over the gain realized under Section 1291 of the Code is taxable as provided under Section 367(b) of the Code.

It is difficult to predict whether, in what form and with what effective date, final Treasury Regulations under Section 1291(f) of the Code will be adopted. Therefore, if Horizon is a PFIC, U.S. Holders of public shares that have not made a timely QEF Election or a mark-to-market election (both as defined and described below) and U.S. Holders of Horizon IPO Public Warrants may, pursuant to the proposed Treasury Regulations, be subject to taxation on the Merger to the extent their public shares or Horizon IPO Public Warrants have a fair market value in excess of their tax basis therein. An Electing Shareholder (as defined below) generally would not be subject to the adverse PFIC rules discussed above with respect to its public shares but rather would include annually in gross income its pro rata share of the ordinary earnings and net capital gain of Horizon, whether or not such amounts are actually distributed to such shareholders in any taxable year.

*D. QEF Election and Mark-to-Market Election*

The impact of the PFIC rules on a U.S. Holder of public shares would depend on whether the U.S. Holder makes a timely and effective election to treat Horizon as a “qualified electing fund” under Section 1295 of the Code (a “QEF Election”) for the taxable year that is the first year in the U.S. Holder’s holding period of public shares during which Horizon qualified as a PFIC. The QEF Election is made on a shareholder-by-shareholder basis and, once made, can be revoked only with the consent of the IRS. A U.S. Holder generally makes a QEF election by attaching a completed IRS Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), including the information provided in a “PFIC Annual Information Statement,” to a timely filed U.S. federal income tax return for the tax year to which the election relates. Retroactive QEF Elections generally may be made only by filing a protective statement with such return and if certain other conditions are met or with the consent of the IRS. If applicable, U.S. Holders should consult their tax advisors regarding the availability and tax consequences of a retroactive QEF Election under their particular circumstances. A U.S. Holder’s ability to make a QEF Election with respect to Horizon is contingent upon, among other things, the provision by Horizon of a “PFIC Annual Information Statement” to such U.S. Holder. Upon written request, Horizon will endeavor to provide to a U.S. Holder such information as the IRS may require, including a PFIC Annual Information Statement, in order to enable the U.S. Holder to make and maintain a QEF Election. There is no assurance, however, that Horizon would timely provide such required information. A U.S. Holder that makes a QEF Election may be referred to as an “Electing Shareholder” and a U.S. Holder that does not make a QEF Election may be referred to as a “Non-Electing Shareholder.” A QEF Election is not available with respect to Horizon IPO Public Warrants. An Electing Shareholder generally would not be subject to the adverse PFIC rules discussed above with respect to their public shares. As a result, such a U.S. Holder should not recognize gain or loss as a result of the Merger except to the extent described under “— Effects of Section 367(b) to U.S. Holders.”

The impact of the PFIC rules on a U.S. Holder of public shares may also depend on whether the U.S. Holder has made an election under Section 1296 of the Code. U.S. Holders that hold (actually or constructively) stock of a foreign corporation that is classified as a PFIC may annually elect to mark such stock to its market value if such stock is regularly traded on an established exchange (a “mark-to-market election”). No assurance can be given that the public shares are considered to be regularly traded for purposes of the mark-to-market election or whether the other requirements of this election are satisfied. If such an election is available and has been made, such U.S. Holders will generally not be subject to the special taxation rules of Section 1291 of the Code discussed herein. However, if the mark-to-market election is made by a Non-Electing Shareholder after the beginning of the holding period for the PFIC stock, then the Section 1291 rules will apply to certain dispositions of, distributions on and other amounts taxable with respect to public shares. Although there is uncertainty under the current rules, a mark-to-market election likely is not available with respect to the Horizon IPO Public Warrants.

**ALL U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE CONSEQUENCES TO THEM OF THE PFIC RULES, INCLUDING, WITHOUT LIMITATION WHETHER A QEF ELECTION, A MARK-TO-MARKET ELECTION OR ANY OTHER ELECTION IS AVAILABLE AND THE CONSEQUENCES TO THEM OF ANY SUCH ELECTION.**

*Effects to U.S. Holders of Exercising Redemption Rights*

The U.S. federal income tax consequences to a U.S. Holder of public shares that exercises its redemption rights to receive cash from the trust account in exchange for all or a portion of its public shares will depend on whether the redemption qualifies as a sale of the public shares redeemed under Section 302 of the Code or is treated as a distribution under Section 301 of the Code. If the redemption qualifies as a sale of such U.S. Holder’s public shares redeemed, such U.S. Holder will generally be treated in the same manner as described under “— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants” below.

The redemption of public shares generally will qualify as a sale of the public shares redeemed if such redemption either (i) is “substantially disproportionate” with respect to the redeeming U.S. Holder, (ii) results in

a “complete termination” of such U.S. Holder’s interest in Vivid Seats PubCo or (iii) is “not essentially equivalent to a dividend” with respect to such U.S. Holder. These tests are explained more fully below.

For purposes of such tests, a U.S. Holder takes into account not only shares actually owned by such U.S. Holder, but also shares that are constructively owned by such U.S. Holder. A redeeming U.S. Holder may constructively own, in addition to shares owned directly, shares owned by certain related individuals and entities in which such U.S. Holder has an interest or that have an interest in such U.S. Holder, as well as any shares such U.S. Holder has a right to acquire by exercise of an option, which would generally include any shares which could be acquired pursuant to the exercise of warrants.

The redemption of public shares generally will be “substantially disproportionate” with respect to a redeeming U.S. Holder if the percentage of Vivid Seats PubCo’s outstanding voting shares that such U.S. Holder actually or constructively owns immediately after the redemption is less than 80 percent of the percentage of Vivid Seats PubCo outstanding voting shares that such U.S. Holder actually or constructively owned immediately before the redemption, and such U.S. Holder immediately after the redemption actually and constructively owned less than 50 percent of the total combined voting power of Vivid Seats PubCo stock. There will be a complete termination of such U.S. Holder’s interest if either (i) all of the shares actually or constructively owned by such U.S. Holder are redeemed or (ii) all of the shares actually owned by such U.S. Holder are redeemed and such U.S. Holder is eligible to waive, and effectively waives in accordance with specific rules, the attribution of the shares owned by certain family members and such U.S. Holder does not constructively own any other shares. The redemption of public shares will not be essentially equivalent to a dividend if it results in a “meaningful reduction” of such U.S. Holder’s proportionate interest in Vivid Seats PubCo. Whether the redemption will result in a “meaningful reduction” in such U.S. Holder’s proportionate interest will depend on the particular facts and circumstances applicable to it. The IRS has indicated in a published ruling that even a small reduction in the proportionate interest of a small minority shareholder in a publicly held corporation that exercises no control over corporate affairs may constitute such a “meaningful reduction.”

If none of the above tests is satisfied, a redemption will be treated as a distribution with respect to the shares, the U.S. federal income tax consequences of which are described below under “ — Distributions on Shares of Vivid Seats Class A Common Stock.” After the application of those rules, any remaining tax basis of the U.S. Holder in the redeemed shares will be added to the U.S. Holder’s adjusted tax basis in its remaining shares, or, if it has none, to the U.S. Holder’s adjusted tax basis in its warrants or possibly in other shares constructively owned by it.

**ALL U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS AS TO THE TAX CONSEQUENCES TO THEM OF A REDEMPTION OF ALL OR A PORTION OF THEIR PUBLIC SHARES PURSUANT TO AN EXERCISE OF REDEMPTION RIGHTS.**

Because the Merger will occur prior to the redemption of U.S. Holders that exercise redemption rights, U.S. Holders exercising redemption rights will be subject to the potential tax consequences of Section 367(b) of the Code and the tax rules relating to PFICs as a result of the Merger (discussed further above).

*Effects to U.S. Holders of the Adoption of the Warrant Amendment*

Horizon intends to treat the adoption of the Warrant Amendment as a deemed exchange, solely for income tax purposes, of Horizon IPO Public Warrants for “new” warrants that qualifies as a “recapitalization” within the meaning of Section 368(a)(1)(E) of the Code. However, due to the absence of direct guidance, these results are not entirely clear. Accordingly, due to the absence of such guidance, it is not possible to predict whether the IRS or a court considering the issue would take a contrary position.

In the event that the adoption of the Warrant Amendment qualifies as a “recapitalization” within the meaning of Section 368(a)(1)(E) of the Code, (i) a U.S. Holder of Horizon IPO Public Warrants should not recognize gain or loss for U.S. federal income tax purposes as a result of such adoption, (ii) such U.S. Holder’s

aggregate tax basis in the “new” warrants deemed to be received in the exchange should equal the aggregate tax basis in the Horizon IPO Public Warrants deemed surrendered in the exchange, and (iii) such U.S. Holder’s holding period for the “new” warrants deemed to be received in the exchange should include the holding period for the Horizon IPO Public Warrants deemed surrendered.

In the event that the adoption of the Warrant Amendment is treated as a deemed exchange for income tax purposes but fails to qualify as a “recapitalization” within the meaning of Section 368(a)(1)(E) of the Code, a U.S. Holder of Horizon IPO Public Warrants should recognize gain or loss in an amount equal to the difference, if any, between the fair market value of the “new” warrants deemed to be received in the exchange and the adjusted tax basis in the Horizon IPO Public Warrants deemed surrendered in the exchange. In such event, such U.S. Holder’s basis in the “new” warrants deemed to be received in the exchange would be equal to the fair market value of the “new” warrant on the date of the adoption of the Warrant Amendment, and such U.S. Holder’s holding period for the “new” warrant deemed to be received in the exchange would begin on the day following the date of the adoption of the Warrant Amendment.

**ALL U.S. HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS AS TO THE TAX CONSEQUENCES TO THEM OF THE ADOPTION OF THE WARRANT AMENDMENT.**

#### *Distributions on Shares of Vivid Seats Class A Common Stock*

A U.S. Holder generally will be required to include in gross income as dividends the amount of any cash distribution paid with respect to shares of Vivid Seats Class A common stock, to the extent the distribution is paid out of Vivid Seats PubCo’s current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Distributions in excess of current and accumulated earnings and profits will constitute a return of capital that will be applied against and reduce (but not below zero) the U.S. Holder’s adjusted tax basis in its shares of Vivid Seats Class A common stock. Any remaining excess will be treated as gain realized on the sale or other disposition of the shares of Vivid Seats Class A common stock and will be treated as described under “— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants” below.

Dividends that Vivid Seats PubCo pays to a U.S. Holder that is a taxable corporation generally will qualify for the dividends received deduction if the requisite holding period is satisfied. With certain exceptions (including, but not limited to, dividends treated as investment income for purposes of investment interest deduction limitations), and provided certain holding period requirements are met, dividends that Vivid Seats PubCo pays to a non-corporate U.S. Holder may be taxed as “qualified dividend income” at the preferential tax rate accorded to long-term capital gains. It is unclear whether the redemption rights described herein with respect to the shares of Vivid Seats Class A common stock may have suspended the running of the applicable holding period for these purposes.

#### *Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants*

Upon a sale or other taxable disposition of shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants (which, in general, would include a redemption of shares of public shares or Horizon IPO Public Warrants that is treated as a sale of such securities as described above and below), a U.S. Holder generally will recognize capital gain or loss. Any such capital gain or loss generally will be long-term capital gain or loss if the U.S. Holder’s holding period for the shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants so disposed of exceeds one year. It is unclear, however, whether the redemption rights described herein with respect to the shares of Vivid Seats Class A common stock may have suspended the running of the applicable holding period for this purpose. Long-term capital gains recognized by non-corporate U.S. Holders will be eligible to be taxed at reduced rates. The deductibility of capital losses is subject to limitations.

Generally, the amount of gain or loss recognized by a U.S. Holder is an amount equal to the difference between (i) the sum of the amount of cash and the fair market value of any property received in such disposition

and (ii) the U.S. Holder's adjusted tax basis in its shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants so disposed of. See "— Effects of the Merger on U.S. Holders" above for discussion of a U.S. Holder's adjusted tax basis in its shares of Vivid Seats Class A common stock and/or Vivid Seats PubCo Warrants following the Merger. See "— Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants" below for a discussion regarding a U.S. Holder's tax basis in Vivid Seats Class A common stock acquired pursuant to the exercise of a Vivid Seats PubCo Warrant.

#### *Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants*

Except as discussed below with respect to the cashless exercise of a Vivid Seats PubCo Warrant, a U.S. Holder generally will not recognize taxable gain or loss as a result of the acquisition of shares of Vivid Seats Class A common stock upon exercise of a Vivid Seats PubCo Warrant for cash. The U.S. Holder's tax basis in the share of Vivid Seats Class A common stock received upon exercise of a Vivid Seats PubCo Warrant generally will be an amount equal to the sum of the U.S. Holder's tax basis in the Vivid Seats PubCo Warrant, and the exercise price of such Vivid Seats PubCo Warrant. It is unclear whether a U.S. Holder's holding period for the shares of Vivid Seats Class A common stock received upon exercise of the Vivid Seats PubCo Warrant will commence on the date of exercise of the Vivid Seats PubCo Warrant or the day following the date of exercise of the Vivid Seats PubCo Warrant; in either case, the holding period will not include the period during which the U.S. Holder held the Vivid Seats PubCo Warrant. If a Vivid Seats PubCo Warrant is allowed to lapse unexercised, a U.S. Holder generally will recognize a capital loss equal to such U.S. Holder's adjusted tax basis in the Vivid Seats PubCo Warrant. See "— Effects of the Merger on U.S. Holders" above for a discussion of a U.S. Holder's adjusted tax basis in its Vivid Seats PubCo Warrant following the Merger.

The tax consequences of a cashless exercise of a Vivid Seats PubCo Warrant are not clear under current tax law. A cashless exercise may not be taxable, either because the exercise is not a realization event or because the exercise is treated as a recapitalization for U.S. federal income tax purposes. In either situation, a U.S. Holder's tax basis in the shares of Vivid Seats Class A common stock received generally should equal the U.S. Holder's tax basis in the Vivid Seats PubCo Warrants. If the cashless exercise was not a realization event, it is unclear whether a U.S. Holder's holding period for the shares of Vivid Seats Class A common stock would be treated as commencing on the date of exercise of the Vivid Seats PubCo Warrant or the day following the date of exercise of the Vivid Seats PubCo Warrant. If the cashless exercise were treated as a recapitalization, the holding period of the shares of Vivid Seats Class A common stock received would include the holding period of the Vivid Seats PubCo Warrants that were exercised.

It is also possible that a cashless exercise may be treated in part as a taxable exchange in which gain or loss would be recognized. In such event, a U.S. Holder may be deemed to have surrendered a number of Vivid Seats PubCo Warrants having a value equal to the exercise price for the total number of Vivid Seats PubCo Warrants to be exercised. The U.S. Holder would recognize capital gain or loss in an amount equal to the difference between the fair market value of the Vivid Seats PubCo Warrants deemed surrendered and the U.S. Holder's tax basis in the Vivid Seats PubCo Warrants deemed surrendered. In this case, a U.S. Holder's tax basis in the shares of Vivid Seats Class A common stock received would equal the sum of the U.S. Holder's tax basis in the Vivid Seats PubCo Warrants exercised, and the exercise price of such Vivid Seats PubCo Warrants. It is unclear whether a U.S. Holder's holding period for the shares of Vivid Seats Class A common stock would commence on the date of exercise of the Vivid Seats PubCo Warrant or the day following the date of exercise of the Vivid Seats PubCo Warrant; in either case, the holding period would not include the period during which the U.S. Holder held the Vivid Seats PubCo Warrant.

Due to the absence of authority on the U.S. federal income tax treatment of a cashless exercise, including when a U.S. Holder's holding period would commence with respect to the shares of Vivid Seats Class A common stock received, there can be no assurance as to which, if any, of the alternative tax consequences and holding periods described above would be adopted by the IRS or a court of law. Accordingly, U.S. Holders should consult their tax advisors regarding the tax consequences of a cashless exercise.



The U.S. federal income tax consequences of an exercise of a Vivid Seats PubCo Warrant described in the section entitled “Description of Vivid Seats PubCo Securities — Redeemable Warrants” are unclear under current law. In the case of a cashless exercise, the exercise may be treated either as if Vivid Seats PubCo redeemed such Vivid Seats PubCo Warrant for shares of Vivid Seats Class A common stock or as an exercise of the Vivid Seats PubCo Warrant. If the cashless exercise of Vivid Seats PubCo Warrants for shares of Vivid Seats Class A common stock is treated as a redemption, then such redemption generally should be treated as a tax-deferred recapitalization for U.S. federal income tax purposes, in which case a U.S. Holder should not recognize any gain or loss on such redemption, and accordingly, a U.S. Holder’s tax basis in the shares of Vivid Seats Class A common stock received should equal the U.S. Holder’s tax basis in the Vivid Seats PubCo Warrants and the holding period of the shares of Vivid Seats Class A common stock should include the holding period of the Vivid Seats PubCo Warrants. Alternatively, if the cashless exercise of a Vivid Seats PubCo Warrant is treated as such, the U.S. federal income tax consequences generally should be as described above in the second and third paragraphs under the heading “— Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants.” In the case of an exercise of a Vivid Seats PubCo Warrant for cash, the U.S. federal income tax treatment generally should be as described above in the first paragraph under the heading “— Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants.” Due to the lack of clarity under current law regarding the treatment described in this paragraph, there can be no assurance as to which, if any, of the alternative tax consequences described above would be adopted by the IRS or a court of law. Accordingly, U.S. Holders should consult their tax advisors regarding the tax consequences of the exercise of a Vivid Seats PubCo Warrant occurring after Vivid Seats PubCo giving notice of an intention to redeem the Vivid Seats PubCo Warrant as described above.

If Vivid Seats PubCo redeems Vivid Seats PubCo Warrants for cash or if Vivid Seats PubCo purchases Vivid Seats PubCo Warrants in an open market transaction, such redemption or purchase generally will be treated as a taxable disposition to the U.S. Holder, taxed as described above under “— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants.”

#### *Possible Constructive Distributions*

The terms of each Vivid Seats PubCo Warrant provide for an adjustment to the exercise price of the Vivid Seats PubCo Warrant or an increase in the shares of Vivid Seats Class A common stock issuable on exercise in certain circumstances discussed in “Description of Vivid Seats PubCo Securities — Redeemable Warrants.” An adjustment which has the effect of preventing dilution generally is not taxable. The U.S. Holders of the Vivid Seats PubCo Warrants would, however, be treated as receiving a constructive distribution from Vivid Seats PubCo if, for example, the adjustment increases the U.S. Holder’s proportionate interest in Vivid Seats PubCo’s assets or earnings and profits (e.g., through a decrease to the exercise price or an increase in the number of shares of Vivid Seats Class A common stock that would be obtained upon exercise) as a result of a distribution of cash or other property to the U.S. Holders of shares of Vivid Seats Class A common stock which is taxable to them as described under “— Distributions on Shares of Vivid Seats Class A Common Stock” above. For example, U.S. Holders of Vivid Seats PubCo Warrants would generally be treated as receiving a constructive distribution from Vivid Seats PubCo where the exercise price of the Vivid Seats PubCo Warrants is reduced in connection with the payment of certain dividends as described in “Description of Vivid Seats PubCo Securities — Redeemable Warrants.” Such constructive distribution received by a U.S. Holder would be subject to U.S. federal income tax in the same manner as if the U.S. Holders of the Vivid Seats PubCo Warrant received a cash distribution from Vivid Seats PubCo equal to the fair market value of such increased interest. The rules governing constructive distributions as a result of certain adjustments with respect to a Vivid Seats PubCo Warrant are complex, and U.S. Holders are urged to consult their tax advisors on the tax consequences any such constructive distribution with respect to a Vivid Seats PubCo Warrant.

#### ***Non-U.S. Holders***

As used herein, a “non-U.S. Holder” is a beneficial owner (other than a partnership or entity treated as a partnership for U.S. federal income tax purposes) of public shares or Horizon IPO Public Warrants or Vivid Seats Class A common stock or Vivid Seats PubCo Warrants, as applicable, that is not a U.S. Holder.



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The following describes U.S. federal income tax considerations relating to (i) the Merger, (ii) the exercise of redemption rights, (iii) the adoption of the Warrant Amendment and (iv) the ownership and disposition of shares of Vivid Seats Class A common stock and Vivid Seats PubCo Warrants by a non-U.S. Holder after the Merger.

### *Effects of the Merger on Non-U.S. Holders*

Horizon does not expect the Merger to result in any U.S. federal income tax consequences to non-U.S. Holders of public shares or Horizon IPO Public Warrants.

### *Effects to Non-U.S. Holders of Exercising Redemption Rights*

Because the Merger will occur immediately prior to the redemption of non-U.S. Holders that exercise redemption rights with respect to Horizon's public shares, the U.S. federal income tax consequences to a non-U.S. Holder of shares of Vivid Seats Class A common stock that exercises its redemption rights to receive cash from the trust account in exchange for all or a portion of its shares of Vivid Seats Class A common stock will depend on whether the redemption qualifies as a sale of the shares of Vivid Seats Class A common stock redeemed, as described above under "— U.S. Holders — Effects to U.S. Holders of Exercising Redemption Rights." If such a redemption qualifies as a sale of shares of Vivid Seats Class A common stock, the U.S. federal income tax consequences to the non-U.S. Holder will be as described below under "— Non U.S. Holders — Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants." If such a redemption does not qualify as a sale of shares of Vivid Seats Class A common stock, the non-U.S. Holder will be treated as receiving a distribution, the U.S. federal income tax consequences of which are described below under "U.S. Federal Income Tax Considerations — Non-U.S. Holders — Distributions on Shares of Vivid Seats Class A Common Stock."

### *Effects to Non-U.S. Holders of the Adoption of the Warrant Amendment*

Horizon does not expect the adoption of the Warrant Amendment to result in any adverse U.S. federal income tax consequences to non-U.S. Holders of Horizon IPO Public Warrants.

### ***Distributions on Shares of Vivid Seats Class A Common Stock***

In general, any distributions made to a non-U.S. Holder with respect to shares of Vivid Seats Class A common stock, to the extent paid out of Vivid Seats PubCo's current or accumulated earnings and profits (as determined under U.S. federal income tax principles), will constitute dividends for U.S. federal income tax purposes and, provided such dividends are not effectively connected with such non-U.S. Holder's conduct of a trade or business within the United States, and will be subject to withholding tax from the gross amount of the dividend at a rate of 30%, unless such non-U.S. Holder is eligible for a reduced rate of withholding tax under an applicable income tax treaty and provides proper certification of its eligibility for such reduced rate (usually on an IRS Form W-8BEN or W-8BEN-E, as applicable). Any distribution not constituting a dividend will be treated first as reducing (but not below zero) the non-U.S. Holder's adjusted tax basis in its shares of Vivid Seats Class A common stock and then, to the extent such distribution exceeds the non-U.S. Holder's adjusted tax basis, as gain realized from the sale or other disposition of such shares of Vivid Seats Class A common stock, which will be treated as described under "— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants." Dividends paid by Vivid Seats PubCo to a non-U.S. Holder that are effectively connected with such non-U.S. Holder's conduct of a trade or business within the United States (and if required by an applicable income tax, are attributable to a U.S. permanent establishment or fixed base maintained by the non-U.S. Holder) will generally not be subject to U.S. withholding tax, provided such non-U.S. Holder complies with certain certification and disclosure requirements (usually by providing an IRS Form W-8ECI). Instead, such dividends will generally be subject to U.S. federal income tax, net of certain deductions, at the same graduated individual or corporate rates applicable to U.S. Holders.

***Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants***

A non-U.S. Holder generally will not be subject to U.S. federal income tax on gain realized on a sale or other disposition of shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants unless:

- (i) such non-U.S. Holder is an individual that was present in the United States for 183 days or more in the taxable year of such disposition and certain other requirements are met, in which case any gain realized will generally be subject to a flat 30% U.S. federal income tax;
- (ii) the gain is effectively connected with a trade or business of such non-U.S. Holder in the United States (and if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or fixed base maintained by such non-U.S. Holder), in which case such gain will be subject to U.S. federal income tax, net of certain deductions, at the same graduated individual or corporate rates applicable to U.S. Holders, and, if the non-U.S. Holder is a corporation, an additional “branch profits tax” may also apply; or
- (iii) Vivid Seats PubCo is or has been a “U.S. real property holding corporation” at any time during the shorter of the five-year period preceding such disposition and such non-U.S. Holder’s holding period.

If paragraph (iii) above applies to a non-U.S. Holder, subject to certain exceptions in the case of interests that are regularly traded on an established securities market, gain recognized by such non-U.S. Holder on the sale, exchange or other disposition of shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants will be subject to tax at generally applicable U.S. federal income tax rates. In addition, a buyer of such shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants from a non-U.S. Holder may be required to withhold U.S. income tax at a rate of 15% of the amount realized upon such disposition. Vivid Seats PubCo will be classified as a “U.S. 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, as determined for U.S. federal income tax purposes. Horizon does not expect Vivid Seats PubCo to be classified as a “U.S. real property holding corporation” following the business combination. However, such determination is factual and in nature and subject to change and no assurance can be provided as to whether Vivid Seats PubCo will be a U.S. real property holding corporation with respect to a non-U.S. Holder following the business combination or at any future time.

***Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants***

The U.S. federal income tax treatment of a non-U.S. Holder’s exercise of a Vivid Seats PubCo Warrant, or the lapse of a Vivid Seats PubCo Warrant held by a non-U.S. Holder, generally will correspond to the U.S. federal income tax treatment of the exercise or lapse of a warrant held by a U.S. Holder, as described above under “— U.S. Holders — Exercise, Lapse or Redemption of Vivid Seats PubCo Warrants,” although to the extent a cashless exercise results in a taxable exchange, the consequences would be similar to those described above under “— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants.” If Vivid Seats PubCo redeems Vivid Seats PubCo Warrants for cash or if it purchases Vivid Seats PubCo Warrants in an open market transaction, such redemption or purchase generally will be treated as a disposition to the non-U.S. Holder, the consequences of which would be similar to those described above under “— Sale, Exchange or Other Disposition of Shares of Vivid Seats Class A Common Stock and Vivid Seats PubCo Warrants.”

***Possible Constructive Distributions.***

The terms of each Vivid Seats PubCo Warrant provide for an adjustment to the exercise price of the Vivid Seats PubCo Warrant or an increase in the shares of Vivid Seats Class A common stock issuable on exercise in certain circumstances discussed in “Description of Vivid Seats PubCo Securities — Redeemable Warrants.” As described above under “— U.S. Holders — Possible Constructive Distributions,” certain adjustments with respect to the Vivid Seats PubCo Warrants can give rise to a constructive distribution. Any constructive

distribution received by a non-U.S. Holder would be subject to U.S. federal income tax (including any applicable withholding) in the same manner as if such non-U.S. Holder received a cash distribution from Vivid Seats PubCo equal to the fair market value of such increased interest. If withholding applies to any constructive distribution received by a non-U.S. Holder, it is possible that the tax would be withheld from any amount paid to or held on behalf of the non-U.S. Holder by the applicable withholding agent. The rules governing constructive distributions as a result of certain adjustments with respect to a Vivid Seats PubCo Warrant are complex, and non-U.S. Holders are urged to consult their tax advisors on the tax consequences any such constructive distribution with respect to a Vivid Seats PubCo Warrant.

### ***Information Reporting Requirements and Backup Withholding***

Information returns will be filed with the IRS and backup withholding may be required in connection with payments of dividends on, and the proceeds from a sale or other disposition of, shares of Vivid Seats Class A common stock. Backup withholding generally will not apply, however, to a U.S. Holder if it is a corporation or other exempt recipient or provides a correct taxpayer identification number and certifies that it is not subject to backup withholding. A non-U.S. Holder may have to comply with certification procedures to establish that it is not a United States person for U.S. federal income tax purposes or otherwise establish an exemption in order to avoid information reporting and backup withholding requirements or to claim a reduced rate of withholding under an applicable income tax treaty. The amount of any backup withholding from a payment to a holder will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund, provided that the required information is furnished by such holder to the IRS in a timely manner.

### ***Foreign Account Tax Compliance Act***

Sections 1471 through 1474 of the Code and the Treasury Regulations and administrative guidance promulgated thereunder (commonly referred to as the "Foreign Account Tax Compliance Act" or "FATCA") generally impose withholding at a rate of 30% in certain circumstances on dividends in respect of, and (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, securities (including public shares or Horizon IPO Public Warrants and shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants) which are held by or through certain foreign financial institutions (including investment funds), unless any such institution (i) enters into, and complies with, an agreement with the IRS to report, on an annual basis, information with respect to interests in, and accounts maintained by, the institution that are owned by certain U.S. persons and by certain non-U.S. entities that are wholly or partially owned by U.S. persons and to withhold on certain payments, or (ii) if required under an intergovernmental agreement between the United States and an applicable foreign country, reports such information to its local tax authority, which will exchange such information with the U.S. authorities. An intergovernmental agreement between the United States and an applicable foreign country may modify these requirements. Accordingly, the entity through which public shares or Horizon IPO Public Warrants and shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants are held will affect the determination of whether such withholding is required. Similarly, dividends in respect of, and (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, public shares or Horizon IPO Public Warrants and shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants held by an investor that is a non-financial non-U.S. entity that does not qualify under certain exceptions will generally be subject to withholding at a rate of 30%, unless such entity either (i) certifies to the applicable withholding agent that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which will in turn be provided to the U.S. Department of Treasury.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends in respect of Horizon's securities. While withholding under FATCA generally would also apply to payments of gross proceeds from the sale or other disposition of securities (including shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants), proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued. All holders should

consult their tax advisors regarding the possible implications of FATCA on their investment in public shares, Horizon IPO Public Warrants, shares of Vivid Seats Class A common stock or Vivid Seats PubCo Warrants.

### **Regulatory Matters**

The business combination is not subject to any additional federal or state regulatory requirement or approval, except for the filings with the Registrar of Companies of the Cayman Islands and the State of Delaware, in each case, that are necessary to effectuate the business combination.

### **Vote Required for Approval**

The Closing is conditioned on the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal at the extraordinary general meeting.

This Business Combination Proposal (and consequently, the Transaction Agreement and the business combination) will require the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Business Combination Proposal.

As of the record date, Sponsor has agreed to vote any Horizon Class A ordinary shares and Horizon Class B ordinary shares it owns in favor of the business combination.

### **Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE BUSINESS COMBINATION PROPOSAL.**

## PROPOSAL NO. 2 — MERGER PROPOSAL

### Overview

Subject to the satisfaction or waiver of all of the conditions set forth in the Transaction Agreement, at the Closing, Horizon and Vivid Seats PubCo shall execute the Plan of Merger annexed to the Transaction Agreement and attached to this proxy statement/prospectus/consent solicitation statement as *Annex K* (“Plan of Merger”). In accordance with the Plan of Merger and the Transaction Agreement, (i) Horizon will merge with and into Vivid Seats PubCo (the “Merger”), (ii) the separate corporate existence of Horizon will cease and Vivid Seats PubCo will be the surviving corporation of the Merger and (iii) Horizon and Vivid Seats PubCo shall cause (a) a certificate of merger to be executed and filed with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL and (b) the Plan of Merger and other documents as required to effect the Merger pursuant to the CICA to be filed with the Registrar of Companies of the Cayman Islands as provided in the applicable provisions of the CICA. At the Effective Time, by virtue of the Merger (i) each Horizon ordinary share will be converted into a share of Vivid Seats Class A common stock, (ii) each Horizon Warrant will be converted into a corresponding Vivid Seats PubCo Warrant and (iii) the certificate of incorporation and bylaws of Vivid Seats PubCo in effect immediately prior to the Effective Time will be the certificate of incorporation and bylaws of the surviving corporation of the Merger.

### Vote Required for Approval

The approval of the Merger Proposal will require a special resolution under Cayman Islands law, being the affirmative vote of the holders of a majority at least two-thirds of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Merger Proposal.

### Resolution to be Voted Upon

The full text of the resolution to be proposed is as follows:

“RESOLVED, as a special resolution, that the Plan of Merger be authorised, approved and confirmed in all respects, that Horizon Acquisition Corporation be and is hereby authorised to enter into the Plan of Merger, and that the merger of Horizon Acquisition Corporation with and into Vivid Seats Inc., with Vivid Seats Inc. surviving the merger be authorised, approved and confirmed in all respects.”

### Recommendation of the Board of Directors

**HORIZON’S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON’S SHAREHOLDERS VOTE “FOR” THE MERGER PROPOSAL.**

## ORGANIZATIONAL DOCUMENTS PROPOSALS

If the Business Combination Proposal is approved and the business combination is to be consummated, Horizon’s amended and restated memorandum and articles of association (the “Existing Organizational Documents”) will be replaced with the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws, respectively (together, the “Vivid Seats PubCo Organizational Documents”).

Horizon’s shareholders are asked to consider and vote upon three separate proposals (collectively, the “Organizational Documents Proposals”) in connection with the replacement of the Existing Organizational Documents with the Vivid Seats PubCo Organizational Documents. The Organizational Documents Proposals are conditioned on the approval of the Business Combination Proposal, the Merger Proposal and the NYSE Proposal. Therefore, if the Business Combination Proposal, the Merger Proposal or the NYSE Proposal are not approved, the Organizational Documents Proposals will have no effect, even if approved by Horizon’s shareholders.

The Vivid Seats PubCo Organizational Documents differ materially from the Existing Organizational Documents. The following table sets forth a summary of the principal changes proposed between the Existing Organizational Documents and the Vivid Seats PubCo Organizational Documents. This summary is qualified by reference to the complete text of the Existing Organizational Documents, attached to this proxy statement/prospectus as Annex B and the complete text of the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws, copies of which are attached to this proxy statement/prospectus as Annex C and Annex D, respectively. All shareholders are encouraged to read each of the Vivid Seats PubCo Organizational Documents in its entirety for a more complete description of its terms. Shareholders are encouraged to carefully consult the information set out under the “Comparison of Corporate Governance and Stockholders’ Rights” section of this proxy statement/prospectus/consent solicitation statement.

Horizon	Vivid Seats PubCo
<b><u>Organizational Documents Proposal A — Authorized Capital Stock</u></b>	
Horizon’s authorized share capital is \$44,100 divided into 400,000,000 Class A ordinary shares of par value \$0.0001 each, 40,000,000 Class B ordinary shares of par value \$0.0001 each and 1,000,000 Preference shares of par value \$0.0001 each.	Vivid Seats PubCo will be authorized to issue 500,000,000 shares of Class A common stock, par value \$0.0001 per share, 250,000,000 shares of Class B common stock, par value \$0.0001 per share, and 50,000,000 shares of preferred stock, par value \$0.0001 per share.
<b><u>Organizational Documents Proposal B — Stockholders’ Agreement</u></b>	
Horizon’s Existing Organizational Documents are subject to the Registration and Shareholder Rights Agreement. For additional information about the Registration and Shareholder Rights Agreement, please see the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations of Horizon — Commitments and Contingencies — Registration and Shareholder Rights.	Per the terms of the Vivid Seats PubCo Amended and Restated Bylaws, the terms of the Vivid Seats PubCo Amended and Restated Bylaws will be deemed to have been revised to conform to the terms of the Stockholders’ Agreement in the event of any inconsistencies between the terms of the Amended and Restated Bylaws and the Stockholders’ Agreement (although no such inconsistencies between the two documents have been identified at this time). In addition, per the terms of the Vivid Seats PubCo Amended and Restated Charter, the terms of the Amended and Restated Charter will be subject to the terms of the Stockholders’ Agreement with respect to newly created directorships and vacancies of the Vivid Seats Board, removal and resignation of directors from the Vivid Seats Board

Horizon	Vivid Seats PubCo
	(which are subject to the board composition and designation rights described in the following sentence) and actions by written consent of the stockholders of Vivid Seats PubCo (which, per the terms of the Stockholders' Agreement, require Vivid Seats PubCo to provide the Horizon Equityholders two Business Days' prior written notice before the taking of any stockholder action by written consent). Pursuant to the Stockholders' Agreement, the Vivid Seats Board will consist of nine (9) directors, comprised of (i) the chief executive officer of Vivid Seats PubCo, (ii) five (5) directors designated by the Topco Equityholders and (iii) three (3) directors designated by the Horizon Equityholders. It also establishes the sunset date as the date in which the Horizon Equityholders own less than 5% of the amount of shares owned at the time of execution of the agreement. The shares of Vivid Seats PubCo common stock held beneficially by Sponsor and Hoya Topco will be subject to certain lock-up restrictions, such as a twelve (12) month lock-up of such shares in each case, subject to limited exceptions as contemplated thereby (including that Sponsor and Hoya Topco may each transfer: (a) fifty percent (50%) of their lock-up shares on the date that is six (6) months after the Closing, on which (i) the price per lock-up share exceeds \$15.00 per share for twenty (20) trading days within a thirty (30) day trading period and (ii) the average daily trading volume exceeds one (1) million shares of Vivid Seats PubCo common stock during such thirty (30) day trading period). The Stockholders' Agreement also contains certain provisions intended to maintain, following the consummation of the business combination, Vivid Seats PubCo's qualification a "controlled company" within the meaning of Nasdaq Listing Rule 5615(c)(1).

Organizational Documents Proposal C — Waiver of Corporate Opportunities

Horizon's Existing Organizational Documents provide that, to the fullest extent permitted by applicable law: (i) no individual serving as a director or an officer shall have any duty, except to the extent expressly assumed by contract, to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as Horizon; and (ii) Horizon renounces any interest or expectancy in, or in being offered an opportunity to participate in, any potential transaction or matter which may be a corporate opportunity for any director or officer, on the one hand, and Horizon on the other.

The Vivid Seats PubCo Organizational Documents will grant an explicit waiver regarding corporate opportunities to certain "exempted persons" (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo).

Horizon	Vivid Seats PubCo
<b><u>Organizational Documents Proposal D — Other Changes — Exclusive Forum</u></b>	
Horizon’s Existing Organizational Documents do not contain a provision adopting an exclusive forum for certain shareholder litigation.	The Vivid Seats PubCo Organizational Documents will adopt Delaware as the exclusive forum for certain stockholder litigation.
<b><u>Organizational Documents Proposal E — Other Changes — DGCL Opt Out and Replacement</u></b>	
Horizon’s Existing Organizational Documents do not provide restrictions on takeovers of Horizon by a related shareholder following a business combination.	Pursuant to the Vivid Seats PubCo Organizational Documents Vivid Seats PubCo will elect not to be governed by Section 203 of the DGCL relating to takeovers by interested stockholders but will provide other similar restrictions regarding takeovers by interested stockholders.
<b><u>Organizational Documents Proposal E — Other Changes — Status as Blank Check Company</u></b>	
Horizon’s Existing Organizational Documents contain provisions related to Horizon’s status as a blank check company.	The Vivid Seats PubCo Organizational Documents will not contain such provisions related to Horizon’s status as a blank check company, which no longer will apply upon consummation of the business combination, as Vivid Seats PubCo will not be a blank check company at such time.



**PROPOSAL NO. 3 — ORGANIZATIONAL DOCUMENTS PROPOSAL A — APPROVAL OF CHANGE TO AUTHORIZED CAPITAL STOCK, AS SET FORTH IN THE PROPOSED ORGANIZATIONAL DOCUMENTS**

**Overview**

Organizational Documents Proposal A — To authorize the change in the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, par value \$0.0001 per share, 40,000,000 Horizon Class B ordinary shares, par value \$0.0001 per share, and 1,000,000 preference shares, par value \$0.0001 per share, of Horizon, to 500,000,000 shares of Vivid Seats Class A common stock, 250,000,000 shares of Vivid Seats Class B common stock, and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo.

As of \_\_\_\_\_, the record date, there are (i) \_\_\_\_\_ Horizon Class A ordinary shares issued and outstanding and (ii) \_\_\_\_\_ Horizon Class B ordinary shares issued and outstanding. In addition, as of the record date, there is an aggregate of \_\_\_\_\_ Horizon IPO Public Warrants and \_\_\_\_\_ Horizon IPO Private Placement Warrants, in each case, issued and outstanding. Pursuant to the Exchange Agreement, dated as of April 21, 2021, by and between Horizon and Sponsor (the “Exchange Agreement”), and effective at least one day prior to the Merger, Sponsor will irrevocably tender to Horizon all of its Horizon Class B ordinary shares for cancellation in exchange for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A ordinary shares, as more particularly set forth therein (collectively, the “Exchange”). The Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants shall be issued to Sponsor on terms substantially similar to the terms of the Form of New Warrant Agreement and with such other changes to be mutually agreed upon by Horizon, Sponsor and Hoya Topco, including that, the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants (i) will have an exercise price of \$10.00 per share and \$15.00 per share, respectively, (ii) will each have a term of ten (10) years, (iii) will not be redeemable by Horizon and (iv) will be fully transferrable, except for any contractual restrictions on transfer set forth in the Stockholders’ Agreement and the Sponsor Agreement.

Subject to the terms and conditions of the Existing Warrant Agreement, after giving effect to the Merger, the Horizon Warrants will convert to Vivid Seats PubCo Warrants which are exercisable for one share of Vivid Seats Class A common stock at an exercise price of \$11.50 per share. No Vivid Seats PubCo Warrants will be exercisable until the later of the date that is (i) 30 days following the Closing and (ii) August 25, 2021.

In order to ensure that Vivid Seats PubCo has sufficient authorized capital for future issuances, Horizon’s board of directors has approved, subject to shareholder approval, that the Vivid Seats PubCo Organizational Documents change the authorized capital stock of Horizon from 400,000,000 Horizon Class A ordinary shares, 40,000,000 Horizon Class B ordinary shares, and 1,000,000 preference shares, par value \$0.0001 per share, of Horizon, to 500,000,000 shares of Vivid Seats Class A common stock, 250,000,000 shares of Vivid Seats Class B common stock, and 50,000,000 shares of preferred stock, par value \$0.0001 per share, of Vivid Seats PubCo.

This summary is qualified by reference to the complete text of the Vivid Seats PubCo Organizational Documents, copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*. All shareholders are encouraged to read the Vivid Seats PubCo Organizational Documents in their entirety for a more complete description of their terms.

### **Reasons for the Proposal**

The principal purpose of this proposal is to provide for an authorized capital structure of Vivid Seats PubCo that will enable it to convert into an operating company governed by the DGCL. Horizon's board of directors believes that it is important for Vivid Seats PubCo to have available for issuance a number of authorized shares of common stock and preferred stock sufficient to support growth and to provide flexibility for future corporate needs.

### **Vote Required for Approval**

The approval of Organizational Documents Proposal A requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on Organizational Documents Proposal A.

### **Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF ORGANIZATIONAL DOCUMENTS PROPOSAL A.**

## **PROPOSAL NO. 4 — ORGANIZATIONAL DOCUMENTS PROPOSAL B — APPROVAL OF PROPOSAL REGARDING CERTAIN PROVISIONS OF THE VIVID SEATS PUBCO ORGANIZATIONAL DOCUMENTS BEING SUBJECT TO THE STOCKHOLDERS' AGREEMENT**

### **Overview**

Organizational Documents Proposal B — To authorize that certain provisions of the Vivid Seats PubCo Amended and Restated Charter and certain provisions of the Vivid Seats PubCo Amended and Restated Bylaws, in each case, will be subject to the Stockholders' Agreement.

Assuming the Business Combination Proposal, the Merger Proposal and the NYSE Proposal are approved, Horizon's shareholders are also being asked to approve Organizational Documents Proposal B, which is, in the judgment of Horizon's board of directors, necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

Pursuant to the Stockholders' Agreement, among other things, the Vivid Seats Board will consist of nine (9) directors, comprised of (i) the chief executive officer of Vivid Seats PubCo, (ii) five (5) directors designated by the Topco Equityholders and (iii) three (3) directors designated by the Horizon Equityholders. It also establishes the sunset date as the date on which the Horizon Equityholders own less than 5% of the amount of shares owned at the time of the execution of the agreement. The shares of Vivid Seats PubCo common stock held beneficially by Sponsor and Hoya Topco will be subject to certain lock-up restrictions, such as a twelve (12) month lock-up of such shares in each case, subject to limited exceptions as contemplated thereby (including that Sponsor and Hoya Topco may each transfer: (a) fifty percent (50%) of their lock-up shares on the date that is six (6) months after the Closing, on which (i) the price per lock-up share exceeds \$15.00 per share for twenty (20) trading days within a thirty (30) day trading period and (ii) the average daily trading volume exceeds one (1) million shares of Vivid Seats PubCo common stock during such thirty (30) day trading period). The Stockholders' Agreement also contains certain provisions intended to maintain, following the consummation of the business combination, Vivid Seats PubCo's qualification as a "controlled company" within the meaning of Nasdaq Listing Rule 5615(c)(1).

Additionally, per the terms of the Vivid Seats PubCo Amended and Restated Bylaws, the terms of the Vivid Seats PubCo Amended and Restated Bylaws will be deemed to be revised to confirm to the terms of the Stockholders' Agreement in the event of any inconsistencies between the terms of the Amended and Restated Bylaws and the Stockholders' Agreement (although no such inconsistencies between the two documents have been identified at this time). In addition, per the terms of the Vivid Seats PubCo Amended and Restated Charter, the terms of the Amended and Restated Charter are subject to the terms of the Stockholders' Agreement with respect to newly created directorships and vacancies of the Vivid Seats PubCo board of directors, removal and resignation of directors from the Vivid Seats PubCo board of directors and actions by written consent of the stockholders of Vivid Seats PubCo. For more information, see the "Comparison of Corporate Governance and Stockholders' Rights" section of this proxy statement/prospectus/consent solicitation statement.

This summary is qualified by reference to the complete text of the Vivid Seats PubCo Organizational Documents and the Stockholders' Agreement, copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C*, *Annex D* and *Annex E*, respectively. All shareholders are encouraged to read the Vivid Seats PubCo Organizational Documents in their entirety for a more complete description of their terms.

### **Reasons for the Proposal**

These provisions are intended to ensure that the terms of the Vivid Seats PubCo Organizational Documents do not conflict with the rights granted under the Stockholders' Agreement. For additional information on the Stockholders' Agreement and the Registration Rights Agreement, see "Business Combination Proposal — Related Agreements."

**Vote Required for Approval**

The approval of Organizational Documents Proposal B requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on Organizational Documents Proposal B.

**Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF ORGANIZATIONAL DOCUMENTS PROPOSAL B.**

**PROPOSAL NO. 5 — ORGANIZATIONAL DOCUMENTS PROPOSAL C — APPROVAL OF PROPOSAL REGARDING THE VIVID SEATS PUBCO AMENDED AND RESTATED CHARTER GRANTING AN EXPLICIT WAIVER REGARDING CORPORATE OPPORTUNITIES TO CERTAIN “EXEMPTED PERSONS”**

**Overview**

Organizational Documents Proposal C — To authorize that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain “exempted persons” (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo).

Assuming the Business Combination Proposal, the Merger Proposal and the NYSE Proposal are approved, Horizon’s shareholders are also being asked to approve Organizational Documents Proposal C, which is, in the judgment of Horizon’s board of directors, necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

This proposal would indicate that the Vivid Seats PubCo Amended and Restated Charter will grant an explicit waiver regarding corporate opportunities to certain “exempted persons” (including Sponsor and Hoya Topco and their respective affiliates, members, directors, officers and/or employees, including any of the foregoing who will serve as directors or officers of Vivid Seats PubCo).

This summary is qualified by reference to the complete text of the Vivid Seats PubCo Amended and Restated Charter, copy of which is attached to this proxy statement/prospectus/consent solicitation statement as *Annex C*. All shareholders are encouraged to read the Vivid Seats PubCo Amended and Restated Charter in its entirety for a more complete description of their terms.

**Reasons for the Proposal**

Horizon’s board of directors believes that granting this waiver is essential to Vivid Seats PubCo’s ability to retain and attract qualified directors and to carry out the intent of the parties with respect to composition of the Vivid Seats Board pursuant to the Stockholders’ Agreement. Horizon expects that qualified directors would likely engage in business activities outside of Vivid Seats PubCo and would anticipate that such outside experience would be beneficial to any such director’s board service for and management of Vivid Seats PubCo, particularly given that a number of such directors will be designated by significant equityholders of Vivid Seats PubCo pursuant to the Stockholders’ Agreement. Horizon’s board of directors believes that without such a waiver, qualified directors could be dissuaded from serving on Vivid Seats PubCo’s board if they are concerned that their directorship could foreclose them from, or expose them to potential liability for, pursuing commercial opportunities in their individual capacity (including in connection with other entities unrelated to Vivid Seats PubCo and its affiliates) and would make it difficult for the parties to carry out the intent of the Stockholders’ Agreement (which granted certain rights to significant equityholders of Vivid Seats PubCo following the business combination). Horizon’s board of directors believes that the limits and exclusions contained in the corporate opportunity waiver included in the Vivid Seats PubCo Organizational Documents provides a clear delineation between which corporate opportunities the “exempted persons” identified thereunder may or may not pursue in his or her individual capacity, and that such clarity will enable Vivid Seats PubCo to attract and retain qualified directors, including as contemplated by the Stockholders’ Agreement.

**Vote Required for Approval**

The approval of Organizational Documents Proposal C requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on Organizational Documents Proposal C.

**Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF ORGANIZATIONAL DOCUMENTS PROPOSAL C.**

**PROPOSAL NO. 6 — ORGANIZATIONAL DOCUMENTS PROPOSAL D — APPROVAL OF PROPOSAL REGARDING THE VIVID SEATS PUBCO ORGANIZATIONAL DOCUMENTS ADOPTING DELAWARE EXCLUSIVE FORUM PROVISIONS**

**Overview**

Organizational Documents Proposal D — To authorize that the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will adopt Delaware as the exclusive forum for certain stockholder litigation.

Assuming the Business Combination Proposal, the Merger Proposal and the NYSE Proposal are approved; Horizon's shareholders are also being asked to approve Organizational Documents Proposal D, which is, in the judgment of Horizon's board of directors, necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

The Vivid Seats PubCo Organizational Documents will provide that to the fullest extent permitted by law, and unless Vivid Seats PubCo consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Vivid Seats PubCo, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of Vivid Seats PubCo's directors, officers, employees or stockholders to Vivid Seats PubCo or its stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Vivid Seats PubCo Amended and Restated Charter or the Vivid Seats PubCo Amended and Restated Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine. The Vivid Seats PubCo Amended and Restated Charter will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. There is uncertainty as to whether a court would enforce such a provision relating to causes of action arising under the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. The clauses described above will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

This summary is qualified by reference to the complete text of the Vivid Seats PubCo Organizational Documents, copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively. All shareholders are encouraged to read the Vivid Seats PubCo Organizational Documents in their entirety for a more complete description of their terms.

**Reasons for the Proposal**

Adopting Delaware as the exclusive forum for certain stockholder litigation is intended to assist Vivid Seats PubCo in avoiding multiple lawsuits in multiple jurisdictions regarding the same matter. The ability to require such claims to be brought in a single forum will help to assure consistent consideration of the issues, the application of a relatively known body of case law and level of expertise and should promote efficiency and cost-savings in the resolutions of such claims. Horizon's board of directors believes that the Delaware courts are best suited to address disputes involving such matters since Vivid Seats PubCo is incorporated in Delaware. Delaware law generally applies to such matters and the Delaware courts have a reputation for expertise in corporate law matters. Delaware offers a specialized Court of Chancery to address corporate law matters, with streamlined procedures and processes, which help provide relatively quick decisions. This accelerated schedule can minimize the time, cost and uncertainty of litigation for all parties. The Court of Chancery has developed considerable expertise with respect to corporate law issues, as well as a substantial and influential body of case law construing Delaware's corporate law and long-standing precedent regarding corporate governance. This provides stockholders and the post-business combination company with more predictability regarding the outcome of

intra-corporate disputes. In the event the Court of Chancery does not have jurisdiction, the other state courts located in Delaware would be the most appropriate forums because these courts have more expertise on matters of Delaware law compared to other jurisdictions; provided that these exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction.

In addition, the exclusive forum provision would promote judicial fairness and avoid conflicting results, as well as make Vivid Seats PubCo's defense of applicable claims less disruptive and more economically feasible, principally by avoiding duplicative discovery.

#### **Vote Required for Approval**

The approval of Organizational Documents Proposal D requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on Organizational Documents Proposal D.

#### **Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF ORGANIZATIONAL DOCUMENTS PROPOSAL D.**



**PROPOSAL NO. 7 — ORGANIZATIONAL DOCUMENTS PROPOSAL E — APPROVAL OF OTHER CHANGES IN CONNECTION WITH THE VIVID SEATS PUBCO ORGANIZATIONAL DOCUMENTS**

**Overview**

Organizational Documents Proposal E — To authorize all other changes in connection with the replacement of Horizon’s amended and restated memorandum and articles of association with the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws as part of the Merger (copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively), including (a) changing the corporate name from “Horizon Acquisition Corporation” to “Vivid Seats Inc.,” (b) electing not to be governed by Section 203 of the DGCL and (c) removing certain provisions related to Horizon’s status as a blank check company that will no longer be applicable upon consummation of the business combination, all of which Horizon’s board of directors believes is necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

Assuming the Business Combination Proposal, the Merger Proposal and the NYSE Proposal are approved, Horizon’s shareholders are also being asked to approve Organizational Documents Proposal C, which is, in the judgment of Horizon’s board of directors, necessary to adequately address the needs of Vivid Seats PubCo after the business combination.

The Vivid Seats PubCo Organizational Documents will cause Vivid Seats PubCo to not be governed by Section 203 of the DGCL and, instead, the Vivid Seats PubCo Amended and Restated Charter will contain provisions that will provide that Sponsor, Hoya Topco, and the Private Equity Owner, and their respective affiliates and successors and their direct and indirect transferees will not be deemed to be “interested stockholders,” regardless of the percentage of Vivid Seats PubCo’s voting stock owned by them, and accordingly will not be subject to such restrictions.

The Vivid Seats PubCo Organizational Documents will not contain provisions related to a blank check company (including those related to operation of the Trust Account, winding up of Horizon’s operations should Horizon not complete a business combination by a specified date, and other such blank check-specific provisions as are present in the Existing Organizational Documents) because, following the consummation of the business combination, Vivid Seats PubCo will not be a blank check company.

Approval of each of the Organizational Documents Proposals, assuming approval of each of the other proposals, will result, upon the Merger, in the wholesale replacement of the Existing Organizational Documents with the Vivid Seats PubCo Organizational Documents. While certain material changes between the Existing Organizational Documents and the Vivid Seats PubCo Organizational Documents have been unbundled into distinct organizational documents proposals or otherwise identified in this Organizational Documents Proposal C, there are other differences between the Existing Organizational Documents and Vivid Seats PubCo Organizational Documents that will be approved (subject to the approval of the aforementioned related proposals and consummation of the business combination) if Horizon’s stockholders approve this Organizational Documents Proposal C. Accordingly, shareholders are encouraged to carefully review the terms of the Vivid Seats PubCo Organizational Documents, attached hereto as *Annex C* and *Annex D*, as well as the information provided in the “Comparison of Corporate Governance and Stockholders’ Rights” section of this proxy statement/prospectus/consent solicitation statement.

**Reasons for the Proposal**

***Corporate Name***

Horizon’s board of directors believes that changing the post-business combination corporate name from “Horizon Acquisition Corporation” to “Vivid Seats Inc.” is desirable to reflect the business combination and to clearly identify Vivid Seats PubCo as the publicly traded entity.

### ***DGCL 203 Opt Out and Replacement***

Horizon's board of directors intends to shield shareholders from the coerciveness of front-end loaded two-tier offers by preventing the offeror from effecting the second step of the offer unless the target's board of directors approves such transaction.

The Vivid Seats PubCo Amended and Restated Charter will provide that Vivid Seats PubCo is not subject to Section 203 of the DGCL, an antitakeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with an "interested stockholder" (which includes a person or group owning 15% or more of the corporation's voting stock) for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Accordingly, Vivid Seats PubCo is not subject to any anti-takeover effects of Section 203. Nevertheless, the Vivid Seats PubCo Amended and Restated Charter will contain provisions that will have a similar effect to Section 203, except that they will provide that Sponsor, Hoya Topco, and the Private Equity Owner, and their respective affiliates and successors and their direct and indirect transferees will not be deemed to be "interested stockholders," regardless of the percentage of Vivid Seats PubCo's voting stock owned by them, and accordingly will not be subject to such restrictions.

Horizon's board of directors believes that it is in the best interest of shareholders to have protections similar to those afforded by Section 203. These provisions will encourage any potential acquiror to negotiate with the Vivid Seats Board and therefore provides an opportunity to possibly obtain a higher purchase price than would otherwise be offered in connection with a proposed acquisition of Vivid Seats PubCo. Such provisions may make it more difficult for an acquirer to consummate certain types of unfriendly or hostile corporate takeovers or other transactions involving Vivid Seats PubCo that have not been approved by the Vivid Seats Board. Horizon's board of directors believes that while such provisions will provide some measure of protection against an interested stockholder that is proposing a two-tiered transaction structure that is unduly coercive, it would not ultimately prevent a potential takeover that enjoys the support of shareholders and will also help to prevent a third party from acquiring "creeping control" of Vivid Seats PubCo without paying a fair premium to all stockholders.

### ***Provisions Related to Status as Blank Check Company***

The elimination of certain provisions related to Horizon's status as a blank check company is desirable because these provisions will serve no purpose following the business combination. For example, the Vivid Seats PubCo Organizational Documents do not include the requirement to dissolve Vivid Seats PubCo and allows it to continue as a corporate entity with perpetual existence following consummation of the business combination. Perpetual existence is the usual period of existence for public corporations, and Horizon's board of directors believes it is the most appropriate period for Vivid Seats PubCo following the business combination. In addition, certain other provisions in the Existing Organizational Documents require that proceeds from Horizon's initial public offering be held in the Trust Account until a business combination or liquidation of Horizon has occurred. These provisions cease to apply once the business combination is consummated and are therefore not included in the Vivid Seats PubCo Organizational Documents.

### **Vote Required for Approval**

The approval of Organizational Documents Proposal E requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on Organizational Documents Proposal E.

**Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF ORGANIZATIONAL DOCUMENTS PROPOSAL E.**

## **PROPOSAL NO. 8 — THE NYSE PROPOSAL**

### **Overview**

If the Business Combination Proposal is approved and the business combination is to be consummated, Horizon's shareholders are also being asked to approve the NYSE Proposal.

Horizon's units, Horizon Class A ordinary shares and Horizon IPO Public Warrants are listed on the NYSE and, as such, Horizon is seeking shareholder approval for the issuance of Vivid Seats Class A common stock and Vivid Seats Class B common stock in connection with the business combination and the PIPE Subscription, to the extent such issuance would require a shareholder vote under NYSE Listing Rule 312.03.

### **Reasons for the NYSE Proposal**

Horizon is seeking shareholder approval in order to comply with NYSE Listing Rule 312.03(c).

Under NYSE Listing Rule 312.03, a company is required to obtain stockholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, if the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. If the business combination is completed pursuant to the Transaction Agreement, Vivid Seats PubCo currently expects to issue an estimated 22,550,000 shares of Vivid Seats Class A common stock (assuming that none of Horizon's outstanding public shares are redeemed) and an estimated 118,200,000 shares of Vivid Seats Class B common stock in connection with the business combination and the PIPE Subscription, which represents more than 20% of the aggregate of Horizon Class A ordinary shares and Horizon Class B ordinary shares outstanding prior to the business combination.

Additionally, pursuant to NYSE Listing Rule 312.03, when a NYSE-listed company proposes to issue securities in connection with the business combination of the stock or assets of another company, stockholder approval is required if a substantial stockholder of such company has a 5% or greater interest, directly or indirectly, in such company or the assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock could result in an increase in outstanding shares of common stock or voting power of 5% or more. NYSE Listing Rule 312.03(e) defines a substantial stockholder as the holder of an interest of 5% or more of either the number of shares of common stock or the voting power outstanding of a NYSE-listed company. Because the Sponsor currently owns greater than 5% of Horizon's ordinary shares, the Sponsor is considered a substantial shareholder of Horizon under NYSE Listing Rule 312.03(e).

In the event that this proposal is not approved by Horizon shareholders, the business combination cannot be consummated. In the event that this proposal is approved by Horizon shareholders, but the Transaction Agreement is terminated (without the business combination being consummated) prior to the issuance of shares of Vivid Seats Class A common stock and Vivid Seats Class B common stock pursuant to the Transaction Agreement, Vivid Seats PubCo will not issue such shares of Vivid Seats Class A common stock and Vivid Seats Class B common stock.

### **Vote Required for Approval**

The approval of the NYSE Proposal requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the NYSE Proposal.

### **Recommendation of the Board of Directors**

**HORIZON'S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON'S SHAREHOLDERS VOTE "FOR" THE APPROVAL OF THE NYSE PROPOSAL.**

## **PROPOSAL NO. 9 — THE ADJOURNMENT PROPOSAL**

### **Overview**

The Adjournment Proposal, if adopted, will allow Horizon’s board of directors to adjourn the extraordinary general meeting to a later date or dates to permit further solicitation of proxies. The Adjournment Proposal will only be presented to Horizon’s shareholders in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal.

### **Consequences if the Adjournment Proposal is Not Approved**

If the Adjournment Proposal is not approved by Horizon shareholders, Horizon’s board of directors may not be able to adjourn the extraordinary general meeting to a later date in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Business Combination Proposal, the Merger Proposal, the Organizational Documents Proposals and the NYSE Proposal.

### **Vote Required for Approval**

The Adjournment Proposal is not conditioned on the approval of any other Proposal at the extraordinary general meeting.

The approval of the Adjournment Proposal requires the approval of an ordinary resolution under Cayman Islands law, being the affirmative vote of the holders of a majority of Horizon ordinary shares who, being present and entitled to vote at the extraordinary general meeting, vote at the extraordinary general meeting. Abstentions and broker non-votes will have no effect on the Adjournment Proposal.

### **Recommendation of the Board of Directors**

**HORIZON’S BOARD OF DIRECTORS RECOMMENDS THAT HORIZON’S SHAREHOLDERS VOTE “FOR” THE APPROVAL OF THE ADJOURNMENT PROPOSAL.**

## HORIZON'S SOLICITATION OF WRITTEN CONSENTS

### General Terms

Until the Consent Solicitation End Date, Horizon is soliciting from the holders of the Horizon IPO Warrants their consent to the Warrant Amendment, which, if approved would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation. The Warrant Amendment, among other things, implements the following amendments to the Horizon IPO Warrants:

- amends the rights specific to the Horizon IPO Private Placement Warrants such that (A) the rights specific to such warrants are retained by the holder thereof regardless of such holder's identity, (B) such warrants are no longer subject to redemption by Horizon at any price and (C) such warrants are no longer generally exercisable on a "cashless basis";
- eliminates Horizon's ability to redeem any Horizon IPO Public Warrants unless the Horizon Class A ordinary shares are trading at a price equal to or in excess of \$18.00 per share; and
- removes certain language related to the treatment of Horizon IPO Warrants in the event of a tender offer for the shares underlying such warrants.

A copy of the Warrant Amendment is attached hereto as *Annex M*. We urge that you carefully read the Warrant Amendment in its entirety. Pursuant to the terms of the Warrant Agreement, the Warrant Amendment requires the vote or written consent of holders of at least 65% of the outstanding Horizon IPO Public Warrants and, solely with respect to the amendments in the Warrant Amendment to the terms of the Horizon IPO Private Placement Warrants or any provision of the Warrant Agreement with respect to the Horizon IPO Private Placement Warrants, 65% of the outstanding Horizon IPO Private Placement Warrants. Effectiveness of the Warrant Amendment is not conditioned upon consummation of the business combination. If requisite consents are obtained from holders of the Horizon IPO Warrants by the Consent Solicitation End Date, the Warrant Amendment will be effected by an amendment in the form set forth in *Annex M* attached hereto, which is to be executed by Horizon and the Warrant Agent promptly following the Consent Solicitation End Date.

**If you elect to provide your consent with respect to the consent solicitation, please follow the instructions in this proxy statement/prospectus/consent solicitation statement and the related documents, including the Written Consent. You may elect to provide your consent with respect to some or all of your Horizon IPO Warrants.**

If you elect to provide your consent, you may withdraw your consent at any time before the Consent Solicitation End Date by following the instructions in this proxy statement/prospectus/consent solicitation statement.

### Record Date for Consent Solicitation

You will be entitled to deliver a Written Consent in response to the consent solicitation if you owned Horizon IPO Warrants at the close of business on \_\_\_\_\_, 2021, which is the record date for delivery of consents to the proposed Warrant Amendment. If your Horizon IPO Warrants are held in "street name" or are in a margin or similar account, you should contact your broker, bank or other nominee to ensure that your consent related to the Horizon IPO Warrants you beneficially own is properly delivered. On the record date, there were \_\_\_\_\_ Horizon IPO Public Warrants and \_\_\_\_\_ Horizon IPO Private Placement Warrants outstanding.

### Proposed Amendment

Set forth below is a brief description of the Warrant Amendment. The following description is qualified in its entirety by reference to the proposed form of the Warrant Amendments (which may be modified or supplemented

prior to the execution thereof in a manner that would not require additional consents under the Warrant Agreement), which are attached hereto as *Annex M*. If the conditions are satisfied or waived with respect to the Horizon IPO Warrants, the Warrant Amendment will be effected by an amendment in the form of *Annex M* attached to the accompanying proxy statement/prospectus/consent solicitation statement, which is to be executed by Horizon and the Warrant Agent promptly following receipt of the requisite consents, at which time consents may no longer be validly revoked or withdrawn.

The amendments described below constitute a single proposal, and a consenting holder of Horizon IPO Warrants must consent to the Warrant Amendment in its entirety. Capitalized terms in the description below have the meanings ascribed to them in the Warrant Agreement.

#### *Certain Changes to Private Placement Warrants*

Section 2.6 (Private Placement Warrants) of the Warrant Agreement prevents the transfer of the special rights of the Horizon IPO Private Placement Warrants except when such warrants are transferred to certain recipients, permits the “cashless exercise” of the such warrants and allows for redemption of such warrants in certain scenarios when the shares underlying such warrants are trading at a price equal to or in excess of \$10.00 per share but less than \$18.00 per share. Section 3.3.1 (Exercise of Warrants – Payment) of the Warrant Agreement provides additional detail regarding scenarios where “cashless exercise” of the Horizon IPO Private Placement Warrants is permissible. The Warrant Amendment will, in substance, eliminate the restrictions on transferability of the special rights of the Horizon IPO Private Placement Warrants, delete language generally permitting “cashless exercise of such warrants, and delete language allowing for the redemption of such warrants by amending and restating Section 2.6 and Section 3.3.1 of the Warrant Agreement in their entirety to read as follows:

2.6. Private Placement Warrants. The Private Placement Warrants shall be identical to the Public Warrants, except that the Private Placement Warrants (i) including the Ordinary Shares issuable upon exercise of the Private Placement Warrants, may not be transferred, assigned or sold until thirty (30) days after the completion by the Company of an initial Business Combination, and (ii) shall not be redeemable by the Company; provided, however, that in the case of (i) the Private Placement Warrants and any Ordinary Shares issued upon exercise of the Private Placement Warrants may be transferred by the holders thereof:

- (a) to the Company’s officers or directors, any affiliate or family member of any of the Company’s officers or directors, any affiliate of the Sponsor or to any member of the Sponsor or any of their affiliates;
- (b) in the case of an individual, as a gift to such person’s immediate family or to a trust, the beneficiary of which is a member of such person’s immediate family, an affiliate of such person or to a charitable organization;
- (c) in the case of an individual, by virtue of laws of descent and distribution upon death of such person;
- (d) in the case of an individual, pursuant to a qualified domestic relations order;
- (e) by private sales or transfers made in connection with any forward purchase agreement or similar arrangement or in connection with the consummation of the Business Combination at prices no greater than the price at which the Private Placement Warrants or Ordinary Shares, as applicable, were originally purchased;
- (f) by virtue of the laws of the Cayman Islands or the Sponsor’s organizational documents upon liquidation or dissolution of the Sponsor;
- (g) in the event of the Company’s liquidation prior to the completion of its initial Business Combination; or
- (h) in the event of, subsequent to the completion of the Company’s initial Business Combination, the Company’s completion of a liquidation, merger, share exchange or other similar transaction which

results in all of the public shareholders having the right to exchange their Ordinary Shares for cash, securities or other property; provided, however, that, in the case of clauses (a) through (f), these permitted transferees (the “Permitted Transferees”) must enter into a written agreement with the Company agreeing to be bound by the transfer restrictions in this Agreement.

3.3. Exercise of Warrants.

3.3.1. Payment. Subject to the provisions of the Warrant and this Agreement, a Warrant may be exercised by the Registered Holder thereof by delivering to the Warrant Agent at its corporate trust department (i) the Definitive Warrant Certificate evidencing the Warrants to be exercised, or, in the case of a Warrant represented by a book-entry, the Warrants to be exercised (the “Book-Entry Warrants”) on the records of the Depository to an account of the Warrant Agent at the Depository designated for such purposes in writing by the Warrant Agent to the Depository from time to time, (ii) an election to purchase (“Election to Purchase”) any Ordinary Shares pursuant to the exercise of a Warrant, properly completed and executed by the Registered Holder on the reverse of the Definitive Warrant Certificate or, in the case of a Book-Entry Warrant, properly delivered by the Participant in accordance with the Depository’s procedures, and (iii) the payment in full of the Warrant Price for each Ordinary Share as to which the Warrant is exercised and any and all applicable taxes due in connection with the exercise of the Warrant, the exchange of the Warrant for the Ordinary Shares and the issuance of such Ordinary Shares, as follows:

- (a) in lawful money of the United States, in good certified check or good bank draft payable to the order of the Warrant Agent; or
- (b) as provide in Section 7.4 hereof.

*Redemption Rights of Horizon*

In the Warrant Agreement, Section 6.2 (Redemption of Warrants for Ordinary Shares) permits Horizon to redeem the Horizon IPO Warrants for \$0.10 per share when the shares underlying such warrants are trading at a price equal to or in excess of \$10.00 per share but less than \$18.00 per share. Following delivery of notice of a redemption by Horizon, Section 6.2 of the Warrant Agreement also permits registered holders of the Horizon IPO Warrants to exercise such warrants on a “cashless basis” and receive a number of Horizon Class A ordinary shares equal to the fair market value of such warrants, as set forth in a table included in Section 6.2 of the Warrant Agreement. The Warrant Amendment proposes to delete this Section 6.2 in its entirety, and to make certain conforming changes by deleting Section 5.6 (Transfer of Warrants), Section 6.5 (Exclusion of Private Placement Warrants) and Section 7.4.2 (Cashless Exercise at Company’s Option) in their entirety and amending and restating Section 3.2 (Duration of Warrants), Section 4.4 (Raising of the Capital in Connection with the Initial Business Combination) and Section 6.4 (Exercise after Notice of Redemption) in their entirety to read as follows:

3.2. Duration of Warrants. A Warrant may be exercised only during the period (the “Exercise Period”) (A) commencing on the later of: (i) the date that is thirty (30) days after the first date on which the Company completes a Business Combination, and (ii) the date that is twelve (12) months from the date of the closing of the Offering, and (B) terminating at the earliest to occur of (x) 5:00 p.m., New York City time on the date that is five (5) years after the date on which the Company completes its initial Business Combination, (y) the liquidation of the Company in accordance with the Company’s amended and restated memorandum and articles of association, as amended from time to time, if the Company fails to complete a Business Combination, and (z) other than with respect to the Private Placement Warrants, 5:00 p.m., New York City time on the Redemption Date (as defined below) as provided in Section 6.3 hereof (the “Expiration Date”); provided, however, that the exercise of any Warrant shall be subject to the satisfaction of any applicable conditions, as set forth in subsection 3.3.2 below, with respect to an effective registration statement or a valid exemption therefrom being available. Except with respect to the right to receive the Redemption Price (as defined below) (other than with respect to a Private Placement Warrant) in the event of a redemption (as set forth in Section 6 hereof), each Warrant (other than a Private Placement Warrant) not exercised on or



before the Expiration Date shall become void, and all rights thereunder and all rights in respect thereof under this Agreement shall cease at 5:00 p.m. New York City time on the Expiration Date. The Company in its sole discretion may extend the duration of the Warrants by delaying the Expiration Date; provided that the Company shall provide at least twenty (20) days prior written notice of any such extension to Registered Holders of the Warrants and, provided further that any such extension shall be identical in duration among all the Warrants.

- 4.4. Raising of the Capital in Connection with the Initial Business Combination. If (x) the Company issues additional Ordinary Shares or equity-linked securities for capital raising purposes in connection with the closing of its initial Business Combination at an issue price or effective issue price of less than \$9.20 per Ordinary Share (with such issue price or effective issue price to be determined in good faith by the Board and, in the case of any such issuance to the Sponsor or its affiliates, without taking into account any Class B ordinary shares, par value \$0.0001 per share, of the Company held by the Sponsor or such affiliates, as applicable, prior to such issuance) (the “Newly Issued Price”), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of the Company’s initial Business Combination on the date of the completion of the Company’s initial Business Combination (net of redemptions), and (z) the volume-weighted average trading price of Ordinary Shares during the ten (10) trading day period starting on the trading day prior to the day on which the Company consummates its initial Business Combination (such price, the “Market Value”) is below \$9.20 per share, the Warrant Price shall be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, the \$18.00 per share redemption trigger price described in Section 6.1 shall be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price.
- 6.4. Exercise After Notice of Redemption. The Public Warrants may be exercised, for cash at any time after notice of redemption shall have been given by the Company pursuant to Section 6.3 hereof and prior to the Redemption Date. On and after the Redemption Date, the record holder of the Public Warrants shall have no further rights except to receive, upon surrender of the Public Warrants, the Redemption Price.

#### *Treatment of Horizon IPO Warrants in a Tender Offer*

Section 4.5 (Replacement of Securities upon Reorganization, etc.) of the Warrant Agreement provides that, in connection with a tender offer for more than 50% of the outstanding Horizon Class A ordinary shares, the Horizon IPO Warrants would be entitled to receive the highest amount paid in the tender offer for 100% of the shares underlying such warrants. The Warrant Amendment proposes to remove this language (requiring holders of Horizon IPO Warrants, in the event of a tender offer, to exercise such warrants and tender the underlying shares in order to receive the tender consideration) by amending and restating Section 4.5 (Replacement of Securities upon Reorganization, etc.) in its entirety to read as follows:

- 4.5. Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the issued and outstanding Ordinary Shares (other than a change under Section 4.1 or Section 4.2 hereof or that solely affects the par value of such Ordinary Shares), or in the case of any merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the issued and outstanding Ordinary Shares), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the holders of the Warrants shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Warrants and in lieu of the Ordinary Shares of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares or stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the Warrants would have received if such holder had exercised his, her or its Warrant(s) immediately prior to such event (the “Alternative Issuance”);

provided, however, that if the holders of the Ordinary Shares were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets constituting the Alternative Issuance for which each Warrant shall become exercisable shall be deemed to be the weighted average of the kind and amount received per share by the holders of the Ordinary Shares in such consolidation or merger that affirmatively make such election; provided further that if less than 70% of the consideration receivable by the holders of the Ordinary Shares in the applicable event is payable in the form of shares in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the Registered Holder properly exercises the Warrant within thirty (30) days following the public disclosure of the consummation of such applicable event by the Company pursuant to a Current Report on Form 8-K filed with the Commission, the Warrant Price shall be reduced by an amount (in dollars) equal to the difference of (i) the Warrant Price in effect prior to such reduction minus (ii) (A) the Per Share Consideration (as defined below) (but in no event less than zero) minus (B) the Black-Scholes Warrant Value (as defined below). The “Black-Scholes Warrant Value” means the value of a Warrant immediately prior to the consummation of the applicable event based on the Black-Scholes Warrant Model for (x) with respect to a Public Warrant, a Capped American Call, and (y) with respect to a Private Placement Warrant, an Uncapped American Call, in each case, as provided on Bloomberg Financial Markets (assuming zero dividends) (“Bloomberg”). For purposes of calculating such amount, (i) Section 6 of this Agreement shall be taken into account, (ii) the price of each Ordinary Share shall be the volume weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event, (iii) the assumed volatility shall be the 90 day volatility obtained from the HVT function on Bloomberg determined as of the trading day immediately prior to the day of the announcement of the applicable event and (iv) the assumed risk-free interest rate shall correspond to the U.S. Treasury rate for a period equal to the remaining term of the Warrant. “Per Share Consideration” means (i) if the consideration paid to holders of the Ordinary Shares consists exclusively of cash, the amount of such cash per Ordinary Share, and (ii) in all other cases, the volume weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event. If any reclassification or reorganization also results in a change in Ordinary Shares covered by subsection 4.1.1, then such adjustment shall be made pursuant to subsection 4.1.1 or Sections 4.2, 4.3 and this Section 4.4. The provisions of this Section 4.4 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no event shall the Warrant Price be reduced to less than the par value per share issuable upon exercise of such Warrant.

In addition to the amendments and modifications to the Warrant Agreement described above, the Warrant Amendment would amend the Warrant Agreement to make certain conforming or other changes to the Warrant Agreement and the Horizon IPO Warrants, including modification or deletion of certain definitions and cross references.

#### **Warrants Subject to the Consent Solicitation**

On August 25, 2020, Horizon consummated the IPO of 50,000,000 Horizon Units, each consisting of one Horizon Class A ordinary share and one-third of one Horizon IPO Public Warrant, each whole Horizon IPO Public Warrant entitling the holder thereof to purchase one Horizon Class A ordinary share at an exercise price of \$11.50 per share, subject to adjustment. The Horizon Units were sold at an offering price of \$10.00 per unit, generating gross proceeds of \$500,000,000. Concurrently, the Sponsor also purchased 5,933,333 Horizon IPO Private Placement Warrants for \$8,900,000. On August 26, 2020, Horizon issued an additional 4,398,433 Horizon Units pursuant to the exercise by the underwriters of a portion of their over-allotment option in connection with the IPO, with each such unit priced at \$10.00 per unit, generating total gross proceeds of \$43,984,330. Concurrently, the Sponsor also purchased an additional 586,458 Horizon IPO Private Placement Warrants for \$879,687. Of the proceeds received from the consummation of the IPO, the private placement purchases by the Sponsor and the sale of the Horizon Units in connection with the exercise of the over-allotment

option, \$543,984,330 (or \$10.00 per Horizon Unit sold in the public offering) was deposited in Horizon's trust account. As of March 31, 2021, Horizon had 18,132,811 and 6,519,791 Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants, respectively, outstanding.

### **Consent Solicitation Period**

The consent solicitation will expire on the Consent Solicitation end Date, which is 11:59 p.m., Eastern Daylight Time, on \_\_\_\_\_, 2021, or such later time and date to which Horizon may extend. Horizon expressly reserves the right, in its sole discretion, at any time or from time to time, to extend the period of time during which the consent solicitation is open. There can be no assurance that Horizon will exercise its right to extend the Consent Solicitation End Date. During any extension, all warrant holders who previously elected to provide their consent will have a right to withdraw such consent until the Consent Solicitation End Date, as extended. If Horizon extends the Consent Solicitation End Date, Horizon will make a public announcement of such extension by no later than 9:00 a.m., Eastern Daylight Time, on the next business day following the Consent Solicitation End Date as in effect immediately prior to such extension. Horizon will announce any decision to withdraw the consent solicitation by disseminating notice by public announcement or otherwise as permitted by applicable law.

### **Amendments to the Consent Solicitation**

Horizon reserves the right at any time or from time to time, to amend the consent solicitation, including by changing the terms of the Warrant Amendment. If Horizon makes a material change in the terms of the consent solicitation or the information concerning the consent solicitation, Horizon will extend the consent solicitation to the extent required by applicable law.

### **Conditions to the Warrant Amendment**

Effectiveness of the Warrant Amendment is conditioned on Horizon receiving, by the Consent Solicitation End Date, the consent of holders of at least 65% of the outstanding Horizon IPO Public Warrants and, solely with respect to any amendments to the terms of the Horizon IPO Private Placement Warrants or any provision of the Warrant Agreement with respect to the Horizon IPO Private Placement Warrants, 65% of the outstanding Horizon IPO Private Placement Warrants. If requisite consents are obtained from holders of the Horizon IPO Warrants by the Consent Solicitation End Date, the Warrant Amendment will be effected by an amendment in the form of *Annex M* attached to the accompanying proxy statement/prospectus/consent solicitation statement, which is to be executed by Horizon and the Warrant Agent promptly following the Consent Solicitation End Date. Effectiveness of the Warrant Amendment is not conditioned upon consummation of the business combination.

### **No Recommendation; Warrant Holder's Own Decision**

Neither Horizon nor any of Horizon's management or Horizon's board of directors is making any recommendation as to whether holders of warrants should consent to the Warrant Amendment in this consent solicitation. Each holder of a Horizon IPO Warrant must make its own decision as to whether consent to the Warrant Amendment.

### **Procedure for Consenting to the Warrant Amendment**

You may only provide your consent to the Warrant Amendment by delivery of a properly completed and duly executed Written Consent pursuant to the procedures described below and set forth in the Written Consent.

A consent delivered pursuant to any method of delivery set forth herein will constitute an agreement and acknowledgement by the consenting warrant holder that, among other things: (i) the warrant holder consents to the Warrant Agreement; (ii) the consent solicitation is discretionary and may be extended, modified, suspended or terminated by Horizon as provided herein; (iii) such warrant holder is voluntarily participating in the consent

solicitation; and (iv) such warrant holder has read this proxy statement/prospectus/consent solicitation statement, Written Consent and Warrant Amendment.

### **Registered Holders of Warrants; Beneficial Owners of Warrants**

For purposes of the consent procedures set forth below, the term “registered holder” means any person in whose name Horizon IPO Warrants are registered on Horizon’s books or who is listed as a participant in a clearing agency’s security position listing with respect to the warrants.

Persons whose Horizon IPO Warrants are held through a direct or indirect participant of The Depository Trust Company (“DTC”), such as a broker, dealer, commercial bank, trust company or other financial intermediary, are not considered registered holders of those Horizon IPO Warrants but are “beneficial owners.” Beneficial owners cannot directly deliver consents pursuant to the consent solicitation. Instead, a beneficial owner must instruct its broker, dealer, commercial bank, trust company or other financial intermediary to deliver its Written Consent on behalf of the beneficial owner. See “ — Required Communications by Beneficial Owners.”

### **Record Date for Consent Solicitation**

You will be entitled to deliver a Written Consent in response to the consent solicitation if you owned Horizon IPO Warrants at the close of business on \_\_\_\_\_, 2021, which is the record date for delivery of consents to the proposed Warrant Amendment. If your Horizon IPO Warrants are held in “street name” or are in a margin or similar account, you should contact your broker, bank or other nominee to ensure that your consent related to the Horizon IPO Warrants you beneficially own is properly delivered. On the record date, there were Horizon IPO Public Warrants and \_\_\_\_\_ Horizon IPO Private Placement Warrants outstanding.

### **Process for Registered Holders to Deliver Written Consents**

A registered holder of Horizon IPO Warrants may deliver its consent using Written Consents in the form provided by Horizon with this proxy statement/prospectus/consent solicitation statement.

In order for a consent to be properly delivered pursuant to the consent solicitation using a Written Consent, the registered holder of the Horizon IPO Warrants must ensure that Horizon receives the following: (i) a properly completed and duly executed Written Consent, in accordance with the instructions of the Written Consent; and (ii) any other documents required by the Written Consent.

In the Written Consent, the consenting registered warrant holder must set forth: (i) its name and address; (ii) the number of warrants for which consent is being provided; and (iii) certain other information specified in the form of Written Consent.

### **Required Communications by Beneficial Owners**

Persons whose Horizon IPO Warrants are held through a direct or indirect DTC participant, such as a broker, dealer, commercial bank, trust company or other financial intermediary, are not considered registered holders of those warrants, but are “beneficial owners,” and must instruct the broker, dealer, commercial bank, trust company or other financial intermediary to tender warrants on their behalf. Your broker, dealer, commercial bank, trust company or other financial intermediary should have provided you with an “Instructions Form” with this proxy statement/prospectus/consent solicitation statement. The Instructions Form is also filed as an exhibit to the registration statement of which this proxy statement/prospectus/consent solicitation statement forms a part. The Instructions Form may be used by you to instruct your broker or other custodian to deliver a consent on your behalf.

### **Timing and Manner of Deliveries**

**CONSENT TO THE WARRANT AMENDMENT WILL BE PROPERLY PROVIDED ONLY IF, BY THE CONSENT SOLICITATION END DATE, THE TABULATION AGENT RECEIVES A PROPERLY COMPLETED AND DULY EXECUTED WRITTEN CONSENT OR AN AGENT’S MESSAGE.**

**ALL DELIVERIES IN CONNECTION WITH THE CONSENT SOLICITATION MUST BE MADE TO THE TABULATION AGENT. NO DELIVERIES SHOULD BE MADE TO HORIZON. ANY DOCUMENTS DELIVERED TO HORIZON WILL NOT BE FORWARDED TO THE TABULATION AGENT AND THEREFORE WILL NOT BE DEEMED TO BE PROPERLY DELIVERED. THE METHOD OF DELIVERY OF ALL REQUIRED DOCUMENTS IS AT THE OPTION AND RISK OF THE WARRANT HOLDERS. IF DELIVERY IS BY MAIL, HORIZON RECOMMENDS REGISTERED MAIL WITH RETURN RECEIPT REQUESTED (PROPERLY INSURED). IN ALL CASES, SUFFICIENT TIME SHOULD BE ALLOWED TO ENSURE TIMELY DELIVERY.**

### **Determination of Validity**

All questions as to the form of documents and the validity and eligibility (including time of receipt) of any Horizon IPO Warrants will be determined by Horizon, in its sole discretion, and its determination will be final and binding. Neither Horizon nor any other person will be under any duty to give notice of any defect or irregularity in consents, nor shall any of Horizon or them incur any liability for failure to give any such notice.

### **Fees and Commissions**

Horizon IPO Warrant holders who provide consents directly to the tabulation agent will not be obligated to pay any charges or expenses of the tabulation agent or any brokerage commissions. Beneficial owners who hold Horizon IPO Warrants through a broker or bank should consult that institution as to whether or not such institution will charge the owner any service fees in connection with providing consents on behalf of the owner pursuant to the consent solicitation.

### **Withdrawal of Consent**

Consents to the Warrant Amendment in connection with the consent solicitation may be revoked at any time before the Consent Solicitation End Date. Consent to the Warrant Amendment may not be withdrawn after the Consent Solicitation End Date. If the Consent Solicitation End Date is extended, you may withdraw your consent at any time until the expiration of such extended Consent Solicitation End Date.

To be effective, a written notice of withdrawal must be timely received by the tabulation agent at its address identified in this proxy statement/prospectus/consent solicitation statement. Any notice of withdrawal must specify the name of the person who provided consent and for which consents are to be withdrawn and the number of warrants for which consent is to be withdrawn. In addition, such notice must specify the name of the registered holder. A withdrawal may not be cancelled, and warrants for which consents are withdrawn will thereafter be deemed not validly consented for purposes of the consent solicitation. However, warrants for which consents are withdrawn may be consented to again by following one of the procedures described above in the section entitled “ — Procedure for Consenting to the Warrant Amendment” at any time prior to the Consent Solicitation End Date.

### **Announcement of Results of the Consent Solicitation**

Horizon will announce the final results of the consent solicitation as promptly as practicable following the Consent Solicitation End Date. The announcement will be made by a press release.

## **Background and Purpose of the Consent Solicitation**

On April 12, 2021, the Staff issued the SEC Statement, which clarified guidance for all SPAC-related companies regarding the accounting and reporting for their warrants. Following review of the SEC Statement, Horizon reevaluated the accounting treatment of the Horizon IPO Warrants as equity, and concluded that, based on the SEC Statement, the Horizon IPO Warrants should be, and should previously have been, classified as a liability measured at fair value, with non-cash fair value adjustments recorded in earnings at each reporting period. Accordingly, Horizon filed restated financial statements as of and for the period from June 12, 2020 through December 31, 2020 in Amendment No. 1 to its Annual Report on Form 10-K/A on May 10, 2021 and financial statements as of and for the period from January 1, 2021 through March 31, 2021 in its Quarterly Report on Form 10-Q on May 24, 2021. The Warrant Amendment, if adopted and as of the time of such adoption, would amend and restate the Horizon IPO Warrants, as contemplated by the Transaction Agreement, to implement certain changes that are intended to result in the Horizon IPO Warrants being accounted for as equity within the balance sheet of Horizon, instead of as a liability measured at fair value with non-cash fair value adjustments recorded in earnings at each reporting period. The accounting treatment of the amended and restated warrant terms is currently under evaluation. A copy of the Warrant Amendment is attached to the accompanying proxy statement/prospectus/consent solicitation statement as *Annex M*.

## **Agreements, Regulatory Requirements and Legal Proceedings**

Other than as set forth under the sections entitled “The Consent Solicitation — Interests of Directors, Executive Officers and Others,” “The Consent Solicitation — Transactions and Agreements Concerning Our Securities” there are no present or proposed agreements, arrangements, understandings or relationships between Horizon, and any of its directors, executive officers, affiliates or any other person relating, directly or indirectly, to the consent solicitation or to Horizon’s securities that are the subject of the consent solicitation.

Except for the requirements of applicable federal and state securities laws, Horizon knows of no federal or state regulatory requirements to be complied with or federal or state regulatory approvals to be obtained by Horizon in connection with the consent solicitation. There are no antitrust laws applicable to the consent solicitation. The margin requirements under Section 7 of the Exchange Act, and the related regulations thereunder, are inapplicable to the consent solicitation. There are no pending legal proceedings relating to the consent solicitation.

## **Interests of Directors, Executive Officers and Others**

Horizon does not beneficially own any of the Horizon IPO Public Warrants, and, except for the 5,166,666 Horizon IPO Public Warrants owned by the Sponsor, none of Horizon’s directors, executive officers and affiliates hold Horizon IPO Public Warrants. The Sponsor, an affiliate of Horizon, currently holds all of the Horizon IPO Private Placement Warrants and has agreed in the Transaction Agreement to use commercially reasonable efforts to revise the terms of the Horizon IPO Warrants such that the Horizon IPO Warrants be treated as equity under the rules and guidelines of the SEC at and after the closing of the Transactions, including using commercially reasonable efforts to obtain any shareholder or warrant holder approvals if necessary to accomplish the foregoing.

Neither Horizon, nor any of its directors, executive officers or controlling persons, or any executive officers, directors, managers or partners of any of our controlling persons, has engaged in any transactions in the Horizon IPO Warrants in the last 60 days.

## **Tabulation Agent**

has been appointed the exchange agent for the consent solicitation. The Written Consent and all correspondence in connection with the consent solicitation should be sent or delivered by each holder of the

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Horizon IPO Warrants, or a beneficial owner's custodian bank, depository, broker, trust company or other nominee, to the tabulation agent at the address and telephone numbers set forth on the back cover page of this proxy statement/prospectus/consent solicitation statement. Horizon will pay the tabulation agent reasonable and customary fees for its services and will reimburse it for its reasonable, out-of-pocket expenses in connection therewith.

### **Fees and Expenses**

The expenses of the consent solicitation will be borne by . The principal solicitations are being made by mail; however, additional solicitations may be made by facsimile transmission, telephone or in person by the tabulation agent, as well as by Horizon's officers and other employees and affiliates.

You will not be required to pay any fees or commissions to Horizon or the tabulation agent in connection with the consent solicitation. If your Horizon IPO Warrants are held through a broker, dealer, commercial bank, trust company or other nominee that delivers a consent on your behalf, your broker or other nominee may charge you a commission or service fee for doing so. You should consult your broker, dealer, commercial bank, trust company or other nominee to determine whether any charges will apply.

## UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

### Introduction

The following unaudited pro forma condensed combined financial information is provided to assist you in your analysis of the financial aspects of the business combination and PIPE Subscription (collectively, the “Transactions”). The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X and should be read in conjunction with the accompanying notes. Vivid Seats PubCo has elected not to present management’s adjustments in the unaudited pro forma condensed combined financial information. The adjustments presented in the unaudited pro forma condensed combined financial information have been identified and presented to provide relevant information necessary for an understanding of the combined company upon consummation of the Transactions.

The unaudited pro forma condensed combined balance sheet as of March 31, 2021 combines the unaudited condensed balance sheet of Horizon as of March 31, 2021 with the condensed consolidated balance sheet of Hoya Intermediate as of March 31, 2021, giving effect to the Transactions and related adjustments as if they had been consummated on that date. In connection with the Transactions, Horizon will merge with and into Vivid Seats PubCo. Upon Closing, the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving entity.

The unaudited pro forma condensed combined statement of operations for the three months ended March 31, 2021 combines the unaudited condensed statement of operations of Horizon for the three months March 31, 2021 with the unaudited condensed consolidated statement of operations of Hoya Intermediate for the three months ended March 31, 2021 and gives effect to the Transactions as if they had occurred on January 1, 2020.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 combines the audited statement of operations of Horizon for the year ended December 31, 2020 with the audited consolidated statement of operations of Hoya Intermediate for the year ended December 31, 2020 and gives effect to the Transactions as if they had occurred on January 1, 2020.

The unaudited pro forma condensed combined financial information was derived from, and should be read in conjunction with, the historical audited financial statements of Horizon and Hoya Intermediate as of and for the year ended December 31, 2020 and the historical unaudited financial statements of Horizon and Hoya Intermediate as of and for the three months ended March 31, 2021, which have been prepared in accordance with GAAP.

The unaudited transaction accounting adjustments reflected in the unaudited pro forma condensed combined financial information represent management’s estimates based on information available as of the date of preparation and are subject to change as additional information becomes available and further analyses are performed. The unaudited pro forma condensed combined financial information is presented for illustrative purposes only and does not necessarily reflect what the combined company’s financial condition or results of operations would have been had the Transactions occurred on the dates indicated. Further, the pro forma condensed combined financial information may not be useful in predicting the future financial condition and results of operations of the combined company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors. The unaudited pro forma condensed combined financial information should be read together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations of Horizon” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations of Vivid Seats,” and other financial information included elsewhere in this proxy statement/prospectus/consent solicitation statement.



## **Description of the Business Combination**

On April 21, 2021, Horizon and Vivid Seats PubCo entered into the Transaction Agreement, which will be effectuated in the following principal steps:

- (a) Horizon will merge with and into Vivid Seats PubCo, upon which the separate corporate existence of Horizon will cease and Vivid Seats PubCo will become the surviving corporation;
- (b) Each Horizon Warrant that is outstanding immediately prior to the Effective Time will become a Vivid Seats PubCo Warrant exercisable for Vivid Seats Class A common stock in accordance with the terms of the applicable warrant agreement;
- (c) Certain third-party investors (including Sponsor) will purchase an aggregate of at least 22,500,000 shares of Vivid Seats Class A common stock in the PIPE Subscription;
- (d) Vivid Seats PubCo will purchase from the Blocker Sellers all of the outstanding equity interests of CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7B VS Equity, LLC and CM7C VS Equity, LLC, each a Delaware corporation in exchange for cash;
- (e) Vivid Seats PubCo will contribute cash to Hoya Intermediate in exchange for Intermediate Common Units and warrants to purchase Intermediate Common Units;
- (f) Hoya Intermediate will redeem 100% of the Intermediate Common Units held by the Redeemed Crescent Parties in exchange for cash in the Crescent Redemption;
- (g) Hoya Topco will subscribe for newly issued Vivid Seats Class B common stock and warrants to purchase Vivid Seats Class B common stock; and
- (h) Hoya Intermediate will contribute cash to Hoya Midco, which Hoya Midco will use to repay its existing debt obligations in the amount of \$488.9 million, resulting in the full repayment of Vivid Seats' May 2020 First Lien Loan and a partial repayment of Vivid Seats' June 2017 First Lien Loan.

As a result of the Transactions, Hoya Topco will hold 60.6% of the issued and outstanding Intermediate Common Units and Vivid Seats PubCo will hold 39.4% of the Intermediate Common Units and will have control over Hoya Intermediate through its voting power, which interests will be controlled by the Private Equity Owner for so long as it controls Hoya Topco. Following the consummation of the Transactions, Vivid Seats PubCo's assets will consist of its direct and indirect interests in Hoya Intermediate.

Proceeds from the Transactions, including cash and marketable securities held in the Trust Account, will be used for:

- Payment of \$13.6 million in deferred underwriting commissions associated with Horizon's initial public offering;
- The Crescent Redemption;
- Reduction of long-term debt of Hoya Intermediate and its subsidiaries; and
- Payment of all advisory fees, transaction fees and expenses of Horizon and Hoya Topco.

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Upon the Closing, the ownership of Vivid Seats PubCo will be as follows:

	Share Ownership in Vivid Seats PubCo			
	Pro Forma Combined Scenario 1 (Assuming No Redemptions)		Pro Forma Combined Scenario 2 (Assuming Maximum Redemptions)	
	Number of Shares	% Ownership	Number of Shares	% Ownership
Hoya Topco	118,200,000	60.6%	118,200,000	60.6%
Horizon Public shareholders	38,898,433	19.9%	—	0%
Shares held by Sponsor and other holders of founder shares <sup>1</sup>	34,550,000	17.7%	73,448,433	37.6%
PIPE Investors <sup>2</sup>	3,500,000	1.8%	3,500,000	1.8%
Total	195,148,433	100.0%	195,148,433	100.0%

- (1) Includes shares acquired by Sponsor as part of the PIPE Subscription. Sponsor to acquire 19,000,000 shares and 57,898,433 shares under the PIPE Subscription in Scenario 1 and Scenario 2, respectively.
- (2) Excludes shares acquired by Sponsor as part of the PIPE Subscription

### Accounting for the Business Combination

The business combination will be accounted for as a reverse recapitalization in accordance with GAAP. Under this method of accounting, Vivid Seats PubCo has been treated as the “acquired” company for financial reporting purposes. This determination was primarily based on the existing controlling equityholder of Hoya Intermediate having a relative majority of the voting power of the combined company and the operations of Hoya Intermediate and its subsidiaries constituting the only ongoing operations of the combined company.

Accordingly, for accounting purposes, the financial statements of the combined company will represent a continuation of the financial statements of Hoya Intermediate. The net assets of Vivid Seats PubCo will be stated at historical cost.

### Treatment of Warrants

As part of the business combination, Vivid Seats PubCo and its subsidiaries expect to issue the following warrants:

- **Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants to be exchanged for Vivid Seats Public IPO Warrants and Vivid Seats Private Placement IPO Warrants, respectively** – Horizon previously issued Horizon IPO Public Warrants as part of its IPO, in addition to issuing Horizon IPO Private Placement Warrants to Sponsor. Pursuant to the Transaction Agreement, each Horizon IPO Public Warrant and each Horizon IPO Private Placement Warrant will become a Vivid Seats Public IPO Warrant and Vivid Seats Private Placement IPO Warrant, respectively, each in form substantially similar to the Existing Warrant Agreement. The Vivid Seats Public IPO Warrants and Vivid Seats Private Placement IPO Warrants that replace the Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants are reflected as liabilities in the unaudited pro forma condensed combined balance sheet, consistent with the historical presentation in Horizon’s unaudited condensed balance sheets.

In advance of the Closing, Horizon intends to amend the terms of the Existing Warrant Agreement, subject to the vote or written consent of the Registered Holders of Horizon IPO Public Warrants and the Horizon IPO Private Placement Warrants. The accounting treatment of the intended amended warrant terms is currently under evaluation.

- **Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants (collectively, the “Exercise Warrants”) to be exchanged for Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants, respectively** – Pursuant to the Exchange Agreement, Sponsor will irrevocably tender to Horizon all of its Horizon Class B ordinary shares for cancellation in exchange for (i) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise price of \$10.00 per share, (ii) warrants to purchase 17,000,000 shares of Horizon Class A ordinary shares at an exercise of \$15.00 per share and (iii) 50,000 shares of Horizon Class A ordinary shares.  
  
At the Effective Time, each Exercise Warrant issued to Sponsor will become a Vivid Seats PubCo \$10.00 Exercise Warrant and Vivid Seats PubCo \$15.00 Exercise Warrant, as applicable, which shall be in form substantially similar to the Form of New Warrant Agreement. The Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants replacing the Exercise Warrants will be exercisable for Vivid Seats Class A common stock. As of the date of this proxy statement/prospectus/consent solicitation statement, Vivid Seats PubCo expects the terms of the Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants to allow for an equity classification. Therefore, these warrants are reflected as an increase in additional paid-in capital.
- **Hoya Intermediate Warrants to be issued to Vivid Seats PubCo** – In tandem with the issuance of the Vivid Seats PubCo Warrants for Vivid Seats Class A common stock, Hoya Intermediate expects to issue an equivalent number of warrants to purchase Intermediate Common Units to Vivid Seats PubCo, each warrant allowing the holder to acquire one Intermediate Common Unit for an exercise price of \$0.001. These warrants will be exercisable only upon the exercise of a corresponding Vivid Seats PubCo Warrant for Vivid Seats Class A common stock. These intercompany warrants do not impact the presentation of the unaudited pro forma financial information as they eliminate in consolidation.
- **Hoya Intermediate Warrants to be issued to Hoya Topco** - Pursuant to the Transaction Agreement, Hoya Intermediate expects to issue to Hoya Topco (i) 3,000,000 Hoya Intermediate Warrants, each allowing the holder to acquire one Intermediate Common Unit at an exercise price of \$10.00 per share, and (ii) 3,000,000 Hoya Intermediate Warrants, each allowing the holder to acquire one Intermediate Common Unit at an exercise price of \$15.00 per share. As of the date of this proxy statement/prospectus, Vivid Seats PubCo expects the terms of the Hoya Intermediate Warrants to be issued to Hoya Topco to require a liability classification, due to the redemption feature of the Intermediate Common Units. This redemption feature allows the members of Hoya Intermediate other than Vivid Seats PubCo and its subsidiaries (i.e., immediately after Closing, Hoya Topco) to cause Hoya Intermediate to redeem Intermediate Common Units for, at the option of Vivid Seats PubCo, either Vivid Seats Class A common stock or cash in an amount equal to the value of Vivid Seats Class A common stock (but only out of the proceeds of a substantially concurrent public offering or private sale of Vivid Seats Class A common stock). Hoya Topco is expected to hold the majority of voting interests in Vivid Seats PubCo upon Closing.
- **Vivid Seats PubCo Class B Warrants to be issued to Hoya Topco** - In tandem with issuance of the Hoya Intermediate Warrants to Hoya Topco, Vivid Seats PubCo expects to issue 6,000,000 Vivid Seats PubCo Class B Warrants to Hoya Topco, each allowing the holder to acquire one share of Vivid Seats Class B common stock for an exercise price of \$0.001 per share. These warrants shall be exercisable only upon the exercise of a corresponding Hoya Intermediate Warrant by Hoya Topco. These warrants, which do not have any economic value due to the lack of earnings and distribution participation rights of the Vivid Seats Class B common stock, do not impact the presentation of the unaudited pro forma financial information.

#### **Tax Receivable Agreement**

The Transaction Agreement contemplates that, at the Closing, Vivid Seats PubCo will enter into a Tax Receivable Agreement with Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA

Holders. Pursuant to the Tax Receivable Agreement, Vivid Seats PubCo will generally be required to pay Hoya Topco and the other TRA Holders 85% of the amount of savings, if any, in U.S. federal, state, local, and foreign taxes that are based on, or measured with respect to, net income or profits, and any interest related thereto that Vivid Seats PubCo (and applicable consolidated, unitary, or combined subsidiaries thereof, if any and collectively the “Tax Group”) realizes, or is deemed to realize, as a result of certain tax attributes (the “Tax Attributes”), including:

- existing tax basis in certain assets of Hoya Intermediate and certain of its direct or indirect subsidiaries, including assets that will eventually be subject to depreciation or amortization, once placed in service;
- tax basis adjustments resulting from taxable exchanges of Intermediate Common Units (including any such adjustments resulting from certain payments made by Vivid Seats PubCo under the Tax Receivable Agreement) acquired by Vivid Seats PubCo from a TRA Holder pursuant to the terms of the Second A&R LLCA;
- certain tax attributes of Blocker Corporations holding Intermediate Common Units that are acquired directly or indirectly by Vivid Seats PubCo pursuant to a Reorganization Transaction;
- certain tax benefits realized by Vivid Seats PubCo as a result of certain U.S. federal income tax allocations of taxable income or gain away from Vivid Seats PubCo and to other members of Hoya Intermediate and deductions or losses to Vivid Seats PubCo and away from other members of Hoya Intermediate, in each case as a result of the business combination; and
- tax deductions in respect of portions of certain payments made under the Tax Receivable Agreement.

For more information about the Tax Receivable Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Tax Receivable Agreement.”

### **Basis of Pro Forma Presentation**

The unaudited pro forma condensed combined financial information has been adjusted to give effect to accounting adjustments related to the Transactions linking the effects of the Transactions to the historical financial information. The adjustments in the unaudited pro forma condensed combined consolidated financial information have been identified and presented to provide relevant information necessary for an accurate understanding of the combined company upon consummation of the Transactions.

The unaudited pro forma condensed combined financial information is for illustrative purposes only. The financial results may have been different had the companies always been combined. You should not rely on the unaudited pro forma condensed combined financial information as being indicative of the historical results that would have been achieved had the companies always been combined or the future results that the combined company will experience.

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Transactions. Horizon and Hoya Intermediate have not had any historical relationship prior to the Transactions. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

**Unaudited Pro Forma Condensed Combined Balance Sheet**  
**As of March 31, 2021**  
**(in thousands, except unit/share and per unit/share amounts)**

			Scenario 1 Assuming No Redemptions into Cash			Scenario 2 Assuming Maximum Redemptions into Cash		
	Hoya Intermediate, LLC (Historical)	Horizon Acquisition Corp. (Historical)	Transaction Accounting Adjustments	PIPE Subscription Adjustments	Pro Forma Balance Sheet	Transaction Accounting Adjustments	PIPE Subscription Adjustments	Pro Forma Balance Sheet
Current assets:								
Cash and cash equivalents	\$ 312,769	\$ 799	\$ (225,110) (c)	\$ 225,000 (e)	\$ 312,998	\$ (225,110) (c)	\$ 613,984 (e)	\$ 312,998
			544,011 (f)			155,027 (f)		
			(13,614) (g)			(13,614) (g)		
			(41,939) (h)			(41,939) (h)		
			(488,918) (i)			(488,918) (i)		
Accounts receivable - net	37,093				37,093			37,093
Inventory - net	8,882				8,882			8,882
Prepaid expenses and other current assets	81,464	277	(1,975) (h)		79,766	(1,975) (h)		79,766
<b>Total current assets</b>	<b>440,208</b>	<b>1,076</b>	<b>(227,545)</b>	<b>225,000</b>	<b>438,739</b>	<b>(616,529)</b>	<b>613,984</b>	<b>438,739</b>
Intangible assets - net	68,455				68,455			68,455
Goodwill	683,327				683,327			683,327
Investments held in Trust Account		544,011	(544,011) (f)		—	(388,984) (a)		—
						(155,027) (f)		
Deferred tax assets			— (j)		—	— (j)		—
Other non-current assets	342				342			342
<b>Total assets</b>	<b>1,192,332</b>	<b>545,087</b>	<b>(771,556)</b>	<b>225,000</b>	<b>1,190,863</b>	<b>(1,160,540)</b>	<b>613,984</b>	<b>1,190,863</b>
Current liabilities:								
Accounts payable	100,626	23	(4,308) (h)		96,341	(4,308) (h)		96,341
Accrued expenses and other current liabilities	257,298	1,185	(809) (i)		257,674	(809) (i)		257,674
Deferred revenue	8,962				8,962			8,962
Current maturities of long-term debt - net	6,412		(1,719) (i)		4,693	(1,719) (i)		4,693
<b>Total current liabilities</b>	<b>373,298</b>	<b>1,208</b>	<b>(6,836)</b>	<b>—</b>	<b>367,670</b>	<b>(6,836)</b>	<b>—</b>	<b>367,670</b>
Long-term debt - net	881,008		(440,561) (i)		440,447	(440,561) (i)		440,447
Other liabilities	497				497			497
Deferred underwriting commissions		13,614	(13,614) (g)		—	(13,614) (g)		—
Derivative warrant liabilities		27,118	36,150 (d)		63,268	36,150 (d)		63,268
Tax receivable agreement liability			— (k)		—	— (k)		—
<b>Total long-term liabilities</b>	<b>881,505</b>	<b>40,732</b>	<b>(418,025)</b>	<b>—</b>	<b>504,212</b>	<b>(418,025)</b>	<b>—</b>	<b>504,212</b>
<b>Commitments and contingencies</b>								
<b>Redeemable Preferred Units</b>								
Redeemable Senior Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at March 31, 2021 (aggregate involuntary liquidation preference of \$220,696 at March 31, 2021)	225,110		(225,110) (c)		—	(225,110) (c)		—

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	Hoya Intermediate, LLC (Historical)	Horizon Acquisition Corp. (Historical)	Scenario 1 Assuming No Redemptions into Cash			Scenario 2 Assuming Maximum Redemptions into Cash		
			Transaction Accounting Adjustments	PIPE Subscription Adjustments	Pro Forma Balance Sheet	Transaction Accounting Adjustments	PIPE Subscription Adjustments	Pro Forma Balance Sheet
Redeemable Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at March 31, 2021	\$ 9,939		\$ (9,939) (b)		\$ —	\$ (9,939) (b)		\$ —
Class A ordinary shares; 49,814,654 shares subject to possible redemption at \$10.00 per share		\$ 498,147	(498,147) (a)		—	(498,147) (a)		—
Non-controlling interest			193,302 (l)		193,302	193,302 (l)		193,302
<b>Members' equity (deficit):</b>								
Common Units - \$0 par value; unlimited authorized, 100 units issued and outstanding at March 31, 2021					—			—
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued and outstanding					—			—
Class A ordinary shares, \$0.0001 par value; 400,000,000 shares authorized; 4,583,779 shares issued and outstanding (excluding 49,814,654 shares subject to possible redemption)		1	(1) (a)		—	(1) (a)		—
Class B ordinary shares, \$0.0001 par value; 40,000,000 shares authorized; 13,599,608 shares issued and outstanding		1	(1) (a)		—	(1) (a)		—
Class A common stock			5 (a)	\$ 2 (e)	7	1 (a)	\$ 6 (e)	7
Class B common stock			12 (b)		12	12 (b)		12
Preferred stock - None outstanding					—			—
Additional paid-in capital	749,985	14,940	488,202 (a)	224,998 (e)	1,226,098	99,222 (a)	613,978 (e)	1,226,098
			9,927 (b)			9,927 (b)		
			(36,150) (d)			(36,150) (d)		
			(32,502) (h)			(32,502) (h)		
			(193,302) (l)			(193,302) (l)		
Accumulated deficit	(1,046,926)	(9,942)	9,942 (a)		(1,099,859)	9,942 (a)		(1,099,859)
			(7,104) (h)			(7,104) (h)		
			(45,829) (i)			(45,829) (i)		
Accumulated other comprehensive loss	(579)				(579)			(579)
<b>Total members'/stockholders' equity (deficit)</b>	<b>(297,520)</b>	<b>5,000</b>	<b>193,199</b>	<b>225,000</b>	<b>125,679</b>	<b>(195,785)</b>	<b>613,984</b>	<b>125,679</b>
<b>Total liabilities, redeemable preferred units, non-controlling interests and members'/stockholders' equity (deficit)</b>	<b>\$ 1,192,332</b>	<b>\$ 545,087</b>	<b>\$ (771,556)</b>	<b>\$ 225,000</b>	<b>\$ 1,190,863</b>	<b>\$ (1,160,540)</b>	<b>\$ 613,984</b>	<b>\$ 1,190,863</b>

**Unaudited Pro Forma Condensed Combined Statement of Operations**  
**For Three Months Ended March 31, 2021**  
(in thousands, except unit/share and per unit/share data)

	Historical		Scenario 1 Assuming No Redemptions into Cash		Scenario 2 Assuming Maximum Redemptions into Cash	
	Hoya Intermediate, LLC (Historical)	Horizon Acquisition Corp. (Historical)	Transaction Accounting Adjustments	Pro Forma Statement of Operations	Transaction Accounting Adjustments	Pro Forma Statement of Operations
Revenues	\$ 24,114	\$	\$	\$ 24,114	\$	\$ 24,114
Cost of revenues (exclusive of depreciation and amortization shown separately below)	3,496			3,496		3,496
Marketing and selling	7,955			7,955		7,955
General and administrative	16,300	963	(3,546)(bb)	13,717	(3,546)(bb)	13,717
Depreciation and amortization	295			295		295
<b>Loss from operations</b>	<b>(3,932)</b>	<b>(963)</b>	<b>3,546</b>	<b>(1,349)</b>	<b>3,546</b>	<b>(1,349)</b>
Other income (expense)						
Interest expense - net	(16,319)		11,290(dd)	(5,029)	11,290(dd)	(5,029)
Net gain on investments held in Trust Account		8	(8)(aa)	—	(8)(aa)	—
Change in fair value of derivative warrant liabilities		8,628	(300)(cc)	8,328	(300)(cc)	8,328
<b>(Loss) income before income taxes</b>	<b>(20,251)</b>	<b>7,673</b>	<b>14,528</b>	<b>1,950</b>	<b>14,528</b>	<b>1,950</b>
Income taxes			— (ee)	—	— (ee)	—
<b>Net (loss) income</b>	<b>(20,251)</b>	<b>7,673</b>	<b>14,528</b>	<b>1,950</b>	<b>14,528</b>	<b>1,950</b>
Less: Net (loss) income attributable to non-controlling interests in subsidiaries			1,182(ff)	1,182	1,182(ff)	1,182
<b>Net (loss) income attributable to Vivid Seats PubCo</b>	<b>\$ (20,251)</b>	<b>\$ 7,673</b>	<b>\$ 13,346</b>	<b>\$ 768</b>	<b>\$ 13,346</b>	<b>\$ 768</b>
Net loss per unit attributable to Common Unit holders, basic and diluted	\$ (270,730)					
Weighted average Common Units outstanding, basic and diluted	100					
Basic and diluted weighted average shares outstanding of Class A ordinary shares		54,398,433		76,948,433(gg)		76,948,433(gg)
Basic and diluted net income per share, Class A ordinary shares		\$ —		\$ 0.01(gg)		\$ 0.01(gg)
Basic and diluted weighted average shares outstanding of Class B ordinary shares		13,599,608				
Basic and diluted net income per share, Class B ordinary shares		\$ 0.56				

**Unaudited Pro Forma Condensed Combined Statement of Operations**  
**For the Year Ended December 31, 2020**  
(in thousands, except unit/share and per unit/share amounts)

			Scenario 1 Assuming No Redemptions into Cash		Scenario 2 Assuming Maximum Redemptions into Cash	
	Hoya Intermediate, LLC (Historical)	Horizon Acquisition Corp. (Historical) (As restated)	Transaction Accounting Adjustments	Pro Forma Statement of Operations	Transaction Accounting Adjustments	Pro Forma Statement of Operations
Revenues	\$ 35,077	\$	\$	\$ 35,077	\$	\$ 35,077
Cost of revenues (exclusive of depreciation and amortization shown separately below)	22,937			22,937		22,937
Marketing and selling	38,121			38,121		38,121
General and administrative	67,952	538	10,650(bb)	79,140	10,650(bb)	79,140
Depreciation and amortization	48,247			48,247		48,247
Impairment charges	573,838			573,838		573,838
<b>Loss from operations</b>	<b>(716,018)</b>	<b>(538)</b>	<b>(10,650)</b>	<b>(727,206)</b>	<b>(10,650)</b>	<b>(727,206)</b>
Other income (expense)						
Interest expense - net	(57,482)		37,154(dd)	(20,328)	37,154(dd)	(20,328)
Loss on extinguishment of debt	(685)		(57,630)(dd)	(58,315)	(57,630)(dd)	(58,315)
Net gain from investments held in Trust Account		18	(18)(aa)	—	(18)(aa)	—
Financing cost – derivative warrant liabilities		(579)		(579)		(579)
Change in fair value of derivative warrant liabilities		(16,517)	(1,020)(cc)	(17,537)	(1,020)(cc)	(17,537)
<b>Loss before income taxes</b>	<b>(774,185)</b>	<b>(17,616)</b>	<b>(32,164)</b>	<b>(823,965)</b>	<b>(32,164)</b>	<b>(823,965)</b>
Income taxes			— (ee)		(ee)	—
<b>Net loss</b>	<b>(774,185)</b>	<b>(17,616)</b>	<b>(32,164)</b>	<b>(823,965)</b>	<b>(32,164)</b>	<b>(823,965)</b>
Less: Net loss attributable to non-controlling interests in subsidiaries			(499,323)(ff)	(499,323)	(499,323)(ff)	(499,323)
<b>Net loss attributable to Vivid Seats PubCo</b>	<b>\$ (774,185)</b>	<b>\$ (17,616)</b>	<b>\$ 467,159</b>	<b>\$ (324,642)</b>	<b>\$ 467,159</b>	<b>\$ (324,642)</b>
Net loss per unit attributable to Common Unit holders, basic and diluted	\$ (7,953,192)					
Weighted average Common Units outstanding, basic and diluted	100					
Basic and diluted weighted average shares outstanding of Class A ordinary shares		54,364,337		76,948,433(gg)		76,948,433(gg)
Basic and diluted net loss per share, Class A ordinary shares		\$ —		\$ (4.22)(gg)		\$ (4.22)(gg)
Basic and diluted weighted average shares outstanding of Class B ordinary shares		13,269,125				
Basic and diluted net loss per share, Class B ordinary shares		\$ (1.33)				



## NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

### 1. Basis of Presentation

The pro forma adjustments have been prepared as if the business combination had been consummated on March 31, 2021, in the case of the unaudited pro forma condensed combined balance sheet, and on January 1, 2020, the beginning of the earliest period presented, in the case of the unaudited pro forma condensed combined statements of operations.

The unaudited pro forma condensed combined financial information has been prepared assuming the following methods of accounting in accordance with GAAP.

The business combination will be accounted for as a reverse recapitalization in accordance with GAAP, with Hoya Intermediate identified as the accounting acquirer, in accordance with the Financial Accounting Standards Board's Accounting Standards Codification Topic 805, *Business Combinations* ("ASC 805"). The identification of Hoya Intermediate as the accounting acquirer is based primarily on evaluation of the following facts and circumstances, which are consistent under both the no redemption and maximum redemption scenarios:

- Following the Transactions, the business affairs of Hoya Intermediate will be controlled by a board of managers. The Hoya Intermediate board of managers will initially consist of two individuals, one of which will be designated by Vivid Seats PubCo and one of which will be designated by Hoya Topco. For each matter presented to the board of managers of Hoya Intermediate, the Vivid Seats PubCo designee will be entitled to two (2) votes and the Hoya Topco designee will be entitled to one (1) vote. Accordingly, Hoya Topco's ability to influence the operations of Hoya Intermediate following the Closing will be by virtue of its ownership of Vivid Seats PubCo common stock;
- The pre-combination controlling equityholder of Hoya Intermediate will hold the majority of voting rights in Vivid Seats PubCo;
- The pre-combination controlling equityholder of Hoya Intermediate will have the right to appoint the majority of the directors on the Vivid Seats Board;
- Operations of Hoya Intermediate will comprise the ongoing operations of Vivid Seats PubCo going forward; and
- Hoya Intermediate is significantly larger than Horizon in terms of revenue, total assets (excluding cash) and employees.

Accordingly, for accounting purposes, the financial statements of the combined company will represent a continuation of the financial statements of Hoya Intermediate with the acquisition being treated as the equivalent of Hoya Intermediate issuing stock for the net assets of Horizon.

### 2. Redemption Scenarios

The unaudited pro forma condensed combined financial information has been prepared assuming two alternative levels of redemption for redeemable Horizon Class A ordinary shares into cash.

- *Assuming No Redemptions:* This presentation assumes no shareholders of redeemable Horizon Class A ordinary shares exercise their redemption rights upon Closing.
- *Assuming Maximum Redemptions:* This presentation assumes that all shareholders of redeemable Horizon Class A ordinary shares, other than those held by Sponsor and other holders of founder shares, exercise their redemption rights upon Closing at an assumed redemption price of \$10.00 per share based on Trust Account figures as of March 31, 2021. The Sponsor Agreement provides that, in the event the cash and cash equivalents of Vivid Seats PubCo after giving effect to the

PIPE Subscription and the Horizon Class A ordinary share redemptions, if any (the “Vivid Seats PubCo Available Cash”) is less than approximately \$769.0 million, Eldridge Industries, LLC shall increase its PIPE Subscription by such shortfall (the “Sponsor Backstop Commitment”). In the event the amount in the Trust Account after giving effect to the PIPE Subscription and the Horizon Class A ordinary share redemptions is expected to be less than \$380.0 million, the Sponsor and its affiliates are entitled to arrange for the purchase of additional shares of Horizon ordinary shares from third party investors at a price of \$10.00 per share with prior written consent of Hoya Topco.

This presentation assumes redemption of all redeemable Horizon Class A ordinary shares would reduce cash available from the Trust Account by \$389.0 million based on Trust Account figures as of March 31, 2021. Assuming total maximum redemptions of \$389.0 million, this presentation assumes the Sponsor would be required to increase PIPE Subscription commitments by \$389.0 million.

In consideration for the Sponsor Backstop Commitment, Hoya Intermediate shall pay Eldridge Industries, LLC approximately \$11.7 million in cash at Closing (“Backstop Fee”). The Backstop Fee is payable by Hoya Intermediate in both scenarios.

The two alternative redemption scenarios assume that there are no adjustments for the exercise of outstanding Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants, because such securities are not exercisable until 30 days after the Closing.

If the actual facts are different than these assumptions, then the amounts and shares outstanding in the unaudited pro forma condensed combined financial information will be different.

### **3. Adjustments and Assumptions to the Unaudited Pro Forma Condensed Combined Balance Sheet as of March 31, 2021**

The unaudited pro forma condensed combined balance sheet as of March 31, 2021 reflects the following adjustments:

(a) Reflects the exchange of Horizon Class A ordinary shares and Horizon Class B ordinary shares for Vivid Seats Class A common stock. As the holders of redeemable Horizon Class A ordinary shares may exercise their redemption rights (refer to Note 2, *Redemption Scenarios*), the number of shares of Vivid Seats Class A common stock issued in exchange for Horizon Class A ordinary shares may vary.

- *Assuming No Redemptions:* Vivid Seats PubCo issues 54,448,433 shares of Vivid Seats Class A common stock, resulting in Vivid Seats Class A common stock of \$5 thousand and a net increase to additional paid-in capital of \$488.2 million. Horizon’s historical equity, including accumulated deficit, Horizon Class A ordinary shares and Horizon Class B ordinary shares, is cancelled.
- *Assuming Maximum Redemptions:* Holders of all 38,898,433 redeemable Horizon Class A ordinary shares exercise their redemption rights, resulting in a decrease of Horizon’s Trust Account of \$389.0 million. Vivid Seats PubCo issues 15,550,000 shares of Vivid Seats Class A common stock, resulting in Vivid Seats Class A common stock of \$1 thousand and a net increase to additional paid-in capital of \$99.2 million. Horizon’s historical equity, including accumulated deficit, Horizon Class A ordinary shares and Horizon Class B ordinary shares, is cancelled.

In both scenarios, all outstanding Horizon Warrants to purchase shares of Horizon Class A ordinary shares shall be exchanged for Vivid Seats PubCo Warrants to purchase shares of Vivid Seats Class A common stock.

The Horizon IPO Public Warrants and Horizon IPO Private Placement Warrants previously issued and classified as liabilities by Horizon shall be exchanged for Vivid Seats PubCo Public IPO Warrants and

Vivid Seats PubCo Private Placement Warrants, respectively, each in form substantially similar to the Existing Warrant Agreement. These warrants remain classified as liabilities in the unaudited pro forma condensed combined financial information.

The Exercise Warrants held by the Sponsor shall be exchanged for Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants, as applicable, each of which shall be in form substantially similar to the Form of New Warrant Agreement. As of the date of preparation, Vivid Seats expects the terms of these warrants to require an equity classification. Therefore, these warrants are reflected as an increase to additional paid-in capital.

(b) Reflects the exchange of Hoya Intermediate shares outstanding for 118,200,000 shares of Vivid Seats Class B common stock, resulting in an increase to Vivid Seats Class B common stock of \$12.0 thousand. Hoya Intermediate's Preferred Units are exchanged as a result of a restructuring immediately prior to the business combination, resulting in a net increase to additional paid-in capital of \$9.9 million.

(c) As part of the restructuring immediately prior to the business combination, Hoya Intermediate expects to effectively redeem its Senior Preferred Units, resulting in a reduction to cash and cash equivalents of \$225.1 million.

(d) Reflects the issuance of Hoya Intermediate Warrants issued to Hoya Topco, which results in a \$36.2 million increase to Derivative warrant liabilities, with a corresponding decrease to additional paid-in capital. The Hoya Intermediate Warrants to be issued to Hoya Topco consist of (i) 3,000,000 Hoya Intermediate Warrants, each allowing the holder to acquire one Intermediate Common Unit at an exercise price of \$10.00 per share, and (ii) 3,000,000 Hoya Intermediate Warrants, each allowing the holder to acquire one Intermediate Common Unit at an exercise price of \$15.00 per share. As of March 31, 2021, Hoya Intermediate Warrants with an exercise price of \$10.00 have an estimated value of \$6.42 per warrant, while Hoya Intermediate Warrants with an exercise price of \$15.00 have an estimated value of \$5.63 per warrant.

As of the date of this proxy statement/prospectus/consent solicitation statement, Vivid Seats PubCo expects the terms of the Hoya Intermediate Warrants to require a liability classification, due to the redemption feature of Intermediate Common Units.

(e) Represents the cash proceeds and issuance of equity in Vivid Seats PubCo related to the PIPE Subscription. The amount of cash proceeds from the PIPE Subscription varies, depending on the number of Horizon Class A ordinary shares redeemed.

- *Assuming No Redemptions:* Reflects proceeds from the PIPE Subscription, increasing cash and cash equivalents by \$225.0 million, with corresponding increases to Vivid Seats Class A common stock of \$2 thousand and additional paid-in capital of \$225.0 million. No increase in PIPE Subscription is required under the Sponsor Backstop Commitment, because no Horizon Class A ordinary shares are redeemed.
- *Assuming Maximum Redemptions:* Reflects proceeds from the PIPE Subscription, increasing cash and cash equivalents by \$614.0 million, with corresponding increases to Vivid Seats Class A common stock of \$6 thousand and additional paid-in capital of \$614.0 million. The increase in proceeds from the PIPE Subscription of \$389.0 million in this scenario reflects the Sponsor Backstop Commitment to increase PIPE Subscription commitments by any shortfall in Vivid Seats PubCo Available Cash below approximately \$769.0 million.

(f) Reflects the reclassification of cash and investments held in the Trust Account that become available for transaction consideration, transaction expenses, redemption of public shares, debt repayments, and the operating activities of Vivid Seats PubCo in conjunction with the business combination.

(g) Reflects the payment of deferred underwriting commissions associated with the initial public offering of Horizon. The deferred underwriting commissions become payable from amounts held in the Trust Account upon Closing.

(h) Represents preliminary estimated transaction costs of \$43.2 million for advisory, banking, legal, and accounting fees, of which \$4.3 million have been incurred and accrued as accounts payable as of March 31, 2021 and \$1.2 million have been incurred and paid as of March 31, 2021, in addition to the Backstop Fee. Of the total, \$14.8 million relates to advisory, legal and other fees to be incurred, \$14.5 million relates to capital market advisory fees, \$11.7 million relates to the Backstop Fee and \$2.2 relates to PIPE Subscription placement fees. Costs directly attributable to the business combination and PIPE Subscription amount to \$32.5 million and are recorded as a reduction to additional paid-in capital, with the remainder recorded to accumulated deficit. As of March 31, 2021, Hoya Intermediate capitalized \$2.0 million of costs directly attributable to the Transactions.

(i) Represents the reduction in outstanding debt held by Hoya Intermediate and its subsidiaries. The unaudited condensed combined pro forma information reflects a payment of \$488.9 million, comprised of, (i) the full repayment of the May 2020 First Lien Loan of \$286.3 million, (ii) a payment of \$165.4 million to reduce the outstanding principal balance on its June 2017 First Lien Loan to \$451.7 million (excluding \$6.6 million of deferred issuance costs and original issue discount associated with the June 2017 First Lien Loan), (iii) payment of \$0.8 million in accrued interest, and (iv) the payment of a prepayment penalty of \$36.4 million associated with the May 2020 First Lien Loan. In addition, the adjustment reflects a charge of \$9.4 million in debt extinguishment costs and a corresponding decrease in long term debt related to deferred financing costs and original issue discounts associated with the Term Loan Facilities. Debt extinguishment costs, combined with the prepayment penalty, result in an increase to accumulated deficit of \$45.8 million. The \$36.4 million prepayment penalty included in the pro forma adjustment reflects a repayment date of March 31, 2021 on the May 2020 First Lien Loan. The prepayment penalty amount reduces over time. Assuming a June 30, 2021 closing date, the prepayment penalty amount incurred would be \$33.3 million.

(j) Under both the no redemption and maximum redemption scenarios, it is more likely than not that the Vivid Seats PubCo deferred tax assets will not be realized in accordance with ASC Topic 740, *Income Taxes* ("ASC 740"). As such, Vivid Seats PubCo has reduced the full carrying amount of the deferred tax assets with a valuation allowance under both scenarios.

(k) Upon the completion of the business combination, Vivid Seats PubCo will be a party to the Tax Receivable Agreement. Under the terms of the Tax Receivable Agreement, Vivid Seats PubCo will make payments to the TRA Holders in respect of 85% of the net tax benefit to Vivid Seats PubCo of certain tax attributes (calculated using certain assumptions, and subject to the terms of the Tax Receivable Agreement). However, until a TRA Holder exchanges at least 5% of its Intermediate Common Units, Vivid Seats PubCo will hold such payments until the TRA Holder satisfies such threshold exchange. Upon the completion of the business combination, no TRA Holder will have exchanged at least 5% of its Intermediate Common Units. The tax impacts of the transaction were estimated based on the applicable law in effect on March 31, 2021.

Due to the uncertainty as to the amount and timing of future exchanges of Hoya Intermediate units by the TRA Holders and as to the price of Vivid Seats Class A common stock at the time of any such exchanges, the unaudited pro forma condensed combined financial information does not assume that any existing equityholder of Hoya Intermediate have exchanged Intermediate Common Units that would create an obligation under the Tax Receivable Agreement. Therefore, no increases in tax basis in Hoya Intermediate's assets or other tax benefits that may be realized under the Tax Receivable Agreement have been reflected in the unaudited condensed combined pro forma financial information. Future exchanges will result in incremental tax attributes and potential cash tax savings for Vivid Seats PubCo. Depending on Vivid Seats PubCo's assessment on realizability of such tax attributes, the arising Tax Receivable Agreement liability will be recorded at the exchange date against equity, or at a later point through income.

A full valuation allowance was established based on Vivid Seats PubCo's assessment of the significant uncertainty that exists with respect to the future realization of the deferred tax asset in accordance with ASC 740. Should Vivid Seats PubCo change its assessment of realizability of its tax attributes in future periods, resulting in expected cash tax savings, it will release its valuation allowance and Tax Receivable Agreement liability through income. Other remeasurements of the Tax Receivable Agreement liability (e.g. due to change in tax rates) will be recorded through income as well.

If Vivid Seats PubCo exercises its right to terminate the Tax Receivable Agreement or in the case of a change in control of Vivid Seats PubCo or a material breach of Vivid Seats PubCo's obligations under the Tax Receivable Agreement, all obligations under the Tax Receivable Agreement will be accelerated and Vivid Seats PubCo will be required to make a payment to the TRA Holders in an amount equal to the present value of future payments under the Tax Receivable Agreement. This payment would be based on certain assumptions, including that Vivid Seats PubCo would have sufficient taxable income to fully utilize the benefits arising from the Tax Attributes subject to the Tax Receivable Agreement. If Vivid Seats PubCo were to elect to terminate the Tax Receivable Agreement immediately after the business combination, assuming the market value of Vivid Seats Class A common stock is equal to \$10 per share, Vivid Seats PubCo currently estimates that it would be required to pay approximately \$429.5 million to satisfy its total liability.

(l) Following the Closing of the Transactions, Vivid Seats PubCo will own a direct controlling interest in Hoya Intermediate, while the existing controlling equityholder of Hoya Intermediate will own an economic interest in Hoya Intermediate shown as a noncontrolling interest in the financial statements of Vivid Seats PubCo. The indirect economic interests are held by the existing controlling equityholder of Hoya Intermediate in the form of Intermediate Common Units that can be redeemed for Vivid Seats Class A common stock or, at the option of Vivid Seats PubCo (but only out of the proceeds of a substantially concurrent public offering or private sale of Vivid Seats Class A common stock), cash in an amount equal to the value of Vivid Seats Class A common stock. If Vivid Seats PubCo elects that the redeemed Intermediate Common Units will be settled in cash, the cash used to settle the redemption of the Intermediate Common Units must be funded through a private or public offering of Vivid Seats Class A common stock no later than five business days after the date the redemption occurs. The noncontrolling interest will decrease as Vivid Seats Class B common stock and Intermediate Common Units are exchanged for Vivid Seats Class A common stock.

The calculation of noncontrolling interest is based on the net assets of Hoya Intermediate and the ownership percentage held by Hoya Topco in Hoya Intermediate following the completion of the Transactions. Accordingly, in both the no redemption scenario and maximum redemption scenario, noncontrolling interest increased to \$193.3 million with a corresponding decrease to additional paid-in capital.

#### **4. Adjustments and Assumptions to the Unaudited Pro Forma Condensed Combined Statements of Operations for the Three Months Ended March 31, 2021 and Year Ended December 31, 2020**

The unaudited pro forma condensed combined statement of operations for the three months ended March 31, 2021 and for the year ended December 31, 2020 reflect the following adjustments:

(aa) Reflects the elimination of the net gain from investments held in the Trust Account.

(bb) Represents estimated one-time costs associated with the Transactions, of which \$3.5 million were incurred as of March 31, 2021, as if they were incurred during the year ended December 31, 2020. These estimated one-time transaction costs, which include advisory, legal and other fees are not capitalizable. Refer to adjustment (h) for additional details regarding transaction costs.

(cc) Represents the change in fair value of the Hoya Intermediate Warrants. Refer to adjustment (d) for additional details regarding the accounting treatment of Hoya Intermediate Warrants to be issued to Hoya Topco.

(dd) Reflects a decrease to interest expense assuming the paydown of a portion of Hoya Intermediate and its subsidiaries' debt from the proceeds of the Transactions as if they occurred on January 1, 2020 based on the interest rate in effect for the June 2017 First Lien Loan, which will remain outstanding following the Transactions. Refer to adjustment (i) for additional details regarding debt.

For the year ended December 31, 2020, the combined company expects to completely repay its May 2020 First Lien Loan and reduce the outstanding balance on the June 2017 First Lien Loan to \$451.7 million, resulting in a \$37.2 million reduction to interest expense. The combined company incurs \$11.9 million in

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debt extinguishment costs related to the original issue discount and deferred financing costs associated with the Term Loan Facilities. The prepayment of the May 2020 First Lien Loan results in a prepayment penalty of \$45.7 million. The prepayment penalty, which reduces over time, is calculated as of the debt issuance date, May 22, 2020. Assuming a June 30, 2021 closing date, the prepayment penalty amount incurred would be \$33.3 million.

For the three months ended March 31, 2021, the combined company expects an incremental \$11.3 million reduction to interest expense as a result of reducing the outstanding balance on the June 2017 First Lien Loan.

(ee) As it is more likely than not that the Vivid Seats PubCo deferred tax assets will not be realized in accordance with ASC 740, no income tax benefit is recognized.

(ff) The net loss attributable to Vivid Seats PubCo was reduced by the noncontrolling interest ownership held in Hoya Intermediate of 60.6% in both the no redemption scenario and maximum redemption scenario.

	Scenario 1 Assuming No Redemptions into Cash	Scenario 2 Assuming Maximum Redemptions into Cash
<b>Three months ended March 31, 2021</b>		
Pro forma net income	\$ 1,950	\$ 1,950
Noncontrolling interest percentage	60.6%	60.6%
Noncontrolling interest pro forma adjustment	(1,182)	(1,182)
Net income attributable to Vivid Seats PubCo	<u>\$ 768</u>	<u>\$ 768</u>
<b>Year ended December 31, 2020</b>		
Pro forma net loss	\$ (823,965)	\$ (823,965)
Noncontrolling interest percentage	60.6%	60.6%
Noncontrolling interest pro forma adjustment	499,323	499,323
Net loss attributable to Vivid Seats PubCo	<u>\$ (324,642)</u>	<u>\$ (324,642)</u>

(gg) Represents the net loss per share calculated using the weighted average shares outstanding and the issuance of additional shares of Vivid Seats Class A common stock in connection with the Transactions, assuming that the shares were outstanding since January 1, 2020. As the Transactions are reflected as if they had occurred at the beginning of the periods presented, the calculation of weighted average shares outstanding for net loss per share assumes that the shares issuable related to the Transactions have been outstanding for the entire period presented. The combined financial information has been prepared assuming both a no redemption and maximum redemption scenario.

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As Vivid Seats PubCo was in a net loss under both scenarios for the year ended December 31, 2020, giving effect to outstanding warrants was not considered in the calculation of diluted net loss per share, since the inclusion of such warrants would be anti-dilutive. Based on their exercise prices, the outstanding warrants redeemable for Vivid Seats Class A common stock in Vivid Seats PubCo are not dilutive for the three months ended March 31, 2021.

	Scenario 1 Assuming No Redemptions into Cash	Scenario 2 Assuming Maximum Redemptions into Cash
Horizon Public shareholders	38,898,433	—
Shares held by Sponsor and other holders of founder shares	15,550,000	15,550,000
PIPE Investors	22,500,000	61,398,433
Pro forma Class A Ordinary Shares outstanding (1)	76,898,433	76,898,400
<b>Three months ended March 31, 2021</b>		
Pro forma net income attributable to Vivid Seats PubCo	768	768
Weighted average Common Stock outstanding, basic and diluted	76,948,433	76,948,433
Net income per share of Common Stock, basic and diluted	\$ 0.01	\$ 0.01
<b>Year ended December 31, 2020</b>		
Pro forma net loss attributable to Vivid Seats PubCo	(324,642)	(324,642)
Weighted average Common Stock outstanding, basic and diluted	76,948,433	76,948,433
Net loss per share of Common Stock, basic and diluted	\$ (4.22)	\$ (4.22)

(1) Excludes Vivid Seats Class B common stock as these shares do not participate in earnings

## OTHER INFORMATION RELATED TO HORIZON

*Unless the context otherwise requires, all references in this section to the “Company,” “we,” “us” or “our” refer to Horizon.*

### General

We are a blank check company incorporated on June 12, 2020 as a Cayman Islands exempted company and formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. We reviewed a number of opportunities to enter into a business combination with an operating business, and we entered into the Transaction Agreement on April 21, 2021. We intend to finance the business combination through a combination of (i) issuance of Vivid Seats Class A common stock, (ii) cash held in the Trust Account net of redemptions and deferred underwriting discounts, and (iii) gross proceeds of the PIPE Subscription.

We seek to capitalize on the multiple decades of combined investment experience of Todd Boehly, our Chairman, Chief Executive Officer and Chief Financial Officer, and the members of our board of directors. Mr. Boehly is the co-founder, Chairman and Chief Executive Officer of Eldridge Industries (“Eldridge”), a holding company with a unique network of businesses across finance, technology, real estate and entertainment.

Founded in 2015 and headquartered in Greenwich, CT, with additional offices in New York, London and Beverly Hills, Eldridge and its affiliated companies employed more than 2,500 people globally as of December 31, 2019. Eldridge owns and operates companies as well as utilizes its network and insights to make minority investments in businesses with attractive growth potential. Mr. Boehly has spent his career seeking to identify growth opportunities and create value. Under his leadership, Eldridge has achieved strong success across multiple financial services and consumer-oriented businesses through a consistent focus on aligning people, capital and technology, managing in excess of \$40 billion in assets as of December 31, 2020.

On August 25, 2020, we completed its initial public offering of 50,000,000 units, plus an additional 4,398,433 units subsequently issued upon full exercise of the underwriters’ over-allotment option, at a price of \$10.00 per unit generating gross proceeds of \$543,984,330 before underwriting discounts and expenses. Each unit consisted of one Horizon Class A ordinary share and one-third of one Horizon IPO Public Warrant. Each whole Horizon IPO Public Warrant entitles the holder thereof to purchase one Horizon Class A ordinary share at an exercise price of \$11.50 per share, subject to certain adjustments. Simultaneous with the closing of its initial public offering, Horizon completed the private placement of 5,933,333 Horizon IPO Private Placement Warrants, plus an additional 586,458 Horizon IPO Private Placement Warrants subsequently issued upon full exercise of the underwriters’ over-allotment option, at a price of \$1.50 per Horizon IPO Private Placement Warrant, generating aggregate total proceeds of \$9.8 million. The Horizon IPO Private Placement Warrants sold in the private placement are substantially identical to the Horizon IPO Public Warrants forming a part of the units sold in the initial public offering, except that (i) subject to certain limited exceptions, they are subject to transfer restrictions until 30 days following the consummation of our initial business combination, (ii) subject to certain limitations, if held by the Sponsor or its permitted transferees, they are not redeemable, and (iii) if held by the Sponsor or its permitted transferees, they may be exercised on a cashless basis and have certain registration rights.

Following the closing of the initial public offering, a total of \$543,984,330 from the net proceeds from the sale of units in the initial public offering and the sale of the Horizon IPO Private Placement Warrants was placed in the Trust Account. The Trust Account may be invested only in U.S. government treasury bills with a maturity of 185 days or less or in money market funds investing solely in United States Treasuries and meeting certain conditions under Rule 2a-7 under the Investment Company Act of 1940, as amended, which invest only in direct U.S. government treasury obligations. As of December 31, 2020, funds in the Trust Account totaled approximately \$544,002,795. These funds will remain in the Trust Account, except for the withdrawal of interest



to pay income taxes, if any, until the earliest of (i) the completion of Horizon's initial business combination or (ii) the redemption of all of the public shares if we are unable to complete a business combination by August 25, 2022 (unless such date is extended in accordance with the Existing Organizational Documents), subject to applicable law.

Horizon Class A ordinary shares and Horizon IPO Public Warrants, which are exercisable for Horizon Class A ordinary shares under certain circumstances, are currently listed on the NYSE under the symbols "HZAC" and "HZAC WS," respectively.

## **Financial Position**

As of December 31, 2020, we had \$544,002,795 held in the Trust Account, after payment of offering costs and deferred underwriting fees of approximately \$13,600,000. With the funds available, we offer a target business a variety of options such as creating a liquidity event for its owners, providing capital for the potential growth and expansion of its operations or strengthening its balance sheet by reducing its debt ratio. Because we are able to complete our initial business combination using our cash, debt or equity securities, or a combination of the foregoing, we have the flexibility to use the most efficient combination that will allow us to tailor the consideration to be paid to the target business to fit its needs and desires.

## **Effecting Our Initial Business Combination**

### ***Fair Market Value of Target Business***

The NYSE listing rules require that our business combination must be with one or more target businesses that together have a fair market value equal to at least 80% of the balance in the Trust Account (less any deferred underwriting commissions and taxes payable on interest earned) at the time of our signing a definitive agreement in connection with our initial business combination. Our board of directors determined that this test was met in connection with the proposed business combination.

### ***Lack of Business Diversification***

For an indefinite period of time after the completion of the business combination, the prospects for our success may depend entirely on the future performance of a single business. Unlike other entities that have the resources to complete business combinations with multiple entities in one or several industries, it is probable that we will not have the resources to diversify our operations and mitigate the risks of being in a single line of business. By completing our initial business combination with only a single entity, our lack of diversification may:

- subject us to negative economic, competitive and regulatory developments, any or all of which may have a substantial adverse impact on the particular industry in which we operate after our initial business combination; and
- cause us to depend on the marketing and sale of a single product or limited number of products or services.

### ***Redemption Rights for Public Shareholders upon Completion of the Business Combination***

We are providing our public shareholders with the opportunity to redeem all or a portion of their Horizon Class A ordinary shares upon the completion of our initial business combination at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account calculated as of two business days prior to the consummation of the initial business combination, including interest (which interest shall be net of taxes payable), divided by the number of then issued and outstanding public shares, subject to the limitations and on the conditions described herein. The amount in the Trust Account was approximately \$10.00 per public share as of December 31, 2020. The per-share amount we will distribute to investors who properly redeem their shares

will not be reduced by the deferred underwriting commissions we will pay to the underwriters. The redemption rights will include the requirement that any beneficial owner on whose behalf a redemption right is being exercised must identify itself in order to validly redeem its shares. There will be no redemption rights upon the completion of our initial business combination with respect to our warrants. Our Sponsor, officers and directors have entered into a letter agreement with us, pursuant to which they have agreed to waive their redemption rights with respect to any founder shares and public shares held by them in connection with the completion of our initial business combination.

#### ***Limitations on Redemptions***

Notwithstanding the foregoing, the Existing Organizational Documents provide that any individual public shareholder, together with any affiliate of such shareholder or any other person with whom such shareholder is acting in concert or as a “group,” as defined under Section 13 of the Exchange Act, will be restricted from seeking redemption rights with respect to public shares held in excess of 15% of the total public shares issued as part of the units sold our initial public offering (“Excess Shares”). However, we have not restricted public shareholders’ ability to vote all of their shares, including Excess Shares, for or against a business combination. Sponsor and our officers and directors have, pursuant to a letter agreement entered into with us, waived their right to have any founder shares or public shares held by them redeemed in connection with a business combination. Unless any of our other affiliates acquires founder shares through a permitted transfer from Sponsor and officers and directors have, and thereby becomes subject to the letter agreement, no such affiliate is subject to this waiver. However, to the extent any such affiliate acquires public shares, such affiliate would be a public shareholder and restricted from seeking redemption rights with respect to any Excess Shares.

#### ***Redemption of Public Shares and Liquidation if no Initial Business Combination***

We have until August 25, 2022 (unless such date is extended in accordance with the Existing Organizational Documents) to complete a business combination. If we are unable to consummate an initial business combination by August 25, 2022, we will: (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders’ rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of our remaining shareholders and our board of directors, liquidate and dissolve, subject, in each case, to our obligations under Cayman Islands law to provide for claims of creditors and the other requirements of applicable law. There will be no redemption rights or liquidating distributions with respect to our warrants, which will expire worthless if we fail to consummate an initial business combination by August 25, 2022. The Existing Organizational Documents provide that, if we wind up for any other reason prior to the consummation of our initial business combination, we will follow the foregoing procedures with respect to the liquidation of the Trust Account as promptly as reasonably possible but not more than ten business days thereafter, subject to applicable Cayman Islands law.

Sponsor and each member of our management team have entered into an agreement with us, pursuant to which they have agreed to waive their rights to liquidating distributions from the Trust Account with respect to any founder shares or private placement shares they hold if we fail to consummate an initial business combination by August 25, 2022 (although they will be entitled to liquidating distributions from the Trust Account with respect to any public shares they hold if we fail to complete our initial business combination by August 25, 2022).

Sponsor and our executive officers and directors have agreed, pursuant to a written agreement with us, that they will not propose any amendment to the Existing Organizational Documents (A) that would modify the substance or timing of our obligation to allow redemption in connection with our initial business combination or

to redeem 100% of our public shares if we do not consummate an initial business combination by August 25, 2022 or (B) with respect to any other provisions relating to shareholders' rights or pre-initial business combination activity, unless we provide our public shareholders with the opportunity to redeem their public shares upon approval of any such amendment at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable), divided by the number of then issued and outstanding public shares. However, we may not redeem our public shares in an amount that would cause our net tangible assets to be less than \$5,000,001. If this optional redemption right is exercised with respect to an excessive number of public shares such that we cannot satisfy the net tangible asset requirement, we would not proceed with the amendment or the related redemption of our public shares at such time.

We expect that all costs and expenses associated with implementing our plan of dissolution, as well as payments to any creditors, will be funded from amounts remaining out of the approximately \$1,000,000 of proceeds held outside the Trust Account, although we cannot assure you that there will be sufficient funds for such purpose. However, if those funds are not sufficient to cover the costs and expenses associated with implementing our plan of dissolution, to the extent that there is any interest accrued in the Trust Account not required to pay income taxes on interest income earned on the Trust Account balance, we may request the trustee to release to us an additional amount of up to \$100,000 of such accrued interest to pay those costs and expenses.

If we were to expend all of the net proceeds of our initial public offering and the sale of the Horizon IPO Private Placement Warrants, other than the proceeds deposited in the Trust Account, and without taking into account interest, if any, earned on the Trust Account, the per-share redemption amount received by shareholders upon our dissolution would be approximately \$10.00. The proceeds deposited in the Trust Account could, however, become subject to the claims of our creditors which would have higher priority than the claims of our public shareholders. We cannot assure you that the actual per-share redemption amount received by shareholders will not be substantially less than \$10.00. While we intend to pay such amounts, if any, we cannot assure you that we will have funds sufficient to pay or provide for all creditors' claims.

Although we will seek to have all vendors, service providers, prospective target businesses and other entities with which we do business execute agreements with us waiving any right, title, interest or claim of any kind in or to any monies held in the Trust Account for the benefit of our public shareholders, there is no guarantee that they will execute such agreements or even if they execute such agreements that they would be prevented from bringing claims against the Trust Account including but not limited to fraudulent inducement, breach of fiduciary responsibility or other similar claims, as well as claims challenging the enforceability of the waiver, in each case in order to gain an advantage with respect to a claim against our assets, including the funds held in the Trust Account. If any third party refuses to execute an agreement waiving such claims to the monies held in the Trust Account, our management will consider whether competitive alternatives are reasonably available to us and will only enter into an agreement with such third party if management believes that such third party's engagement would be in the best interests of the company under the circumstances. Examples of possible instances where we may engage a third party that refuses to execute a waiver include the engagement of a third party consultant whose particular expertise or skills are believed by management to be significantly superior to those of other consultants that would agree to execute a waiver or in cases where management is unable to find a service provider willing to execute a waiver. WithumSmith+Brown, PC, our independent registered public accounting firm, and the underwriters of our initial public offering will not execute agreements with us waiving such claims to the monies held in the Trust Account. In addition, there is no guarantee that such entities will agree to waive any claims they may have in the future as a result of, or arising out of, any negotiations, contracts or agreements with us and will not seek recourse against the Trust Account for any reason. In order to protect the amounts held in the Trust Account, Sponsor has agreed that it will be liable to us if and to the extent any claims by a third party for services rendered or products sold to us, or a prospective target business with which we have entered into a written letter of intent, confidentiality or other similar agreement or business combination agreement, reduce the amount of funds in the Trust Account to below the lesser of (i) \$10.00 per public share and (ii) the actual amount per public share held in the Trust Account as of the date of the liquidation of the Trust Account, if less than

\$10.00 per public share due to reductions in the value of the trust assets, less taxes payable, provided that such liability will not apply to any claims by a third party or prospective target business who executed a waiver of any and all rights to the monies held in the Trust Account (whether or not such waiver is enforceable) nor will it apply to any claims under our indemnity of the underwriters of our initial public offering against certain liabilities, including liabilities under the Securities Act. However, we have not asked Sponsor to reserve for such indemnification obligations, nor have we independently verified whether Sponsor has sufficient funds to satisfy its indemnity obligations and we believe that Sponsor's only assets are securities of our company. Therefore, we cannot assure you that Sponsor would be able to satisfy those obligations. As a result, if any such claims were successfully made against the Trust Account, the funds available for our initial business combination and redemptions could be reduced to less than \$10.00 per public share. In such event, we may not be able to complete our initial business combination, and you would receive such lesser amount per share in connection with any redemption of your public shares. None of our officers or directors will indemnify us for claims by third parties including, without limitation, claims by vendors and prospective target businesses.

In the event that the proceeds in the Trust Account are reduced below the lesser of (i) \$10.00 per public share and (ii) the actual amount per public share held in the Trust Account as of the date of the liquidation of the Trust Account, if less than \$10.00 per public share due to reductions in the value of the trust assets, less taxes payable, and Sponsor asserts that it is unable to satisfy its indemnification obligations or that it has no indemnification obligations related to a particular claim, our independent directors would determine whether to take legal action against Sponsor to enforce its indemnification obligations. While we currently expect that our independent directors would take legal action on our behalf against Sponsor to enforce its indemnification obligations to us, it is possible that our independent directors in exercising their business judgment and subject to their fiduciary duties may choose not to do so in any particular instance if, for example, the cost of such legal action is deemed by the independent directors to be too high relative to the amount recoverable or if the independent directors determine that a favorable outcome is not likely. Accordingly, we cannot assure you that due to claims of creditors the actual value of the per-share redemption price will not be less than \$10.00 per share.

We will seek to reduce the possibility that Sponsor will have to indemnify the Trust Account due to claims of creditors by endeavoring to have all vendors, service providers, prospective target businesses and other entities with which we do business execute agreements with us waiving any right, title, interest or claim of any kind in or to monies held in the Trust Account. Sponsor will also not be liable as to any claims under our indemnity of the underwriters of our initial public offering against certain liabilities, including liabilities under the Securities Act. We will have access to up to approximately \$1,000,000 from the proceeds of our initial public offering and the sale of the Horizon IPO Private Placement Warrants with which to pay any such potential claims (including costs and expenses incurred in connection with our liquidation, currently estimated to be no more than approximately \$100,000). In the event that we liquidate and it is subsequently determined that the reserve for claims and liabilities is insufficient, shareholders who received funds from our Trust Account could be liable for claims made by creditors. In the event that our offering expenses exceed our estimate of \$1,000,000, we may fund such excess with funds from the funds not to be held in the Trust Account. In such case, the amount of funds we intend to be held outside the Trust Account would decrease by a corresponding amount. Conversely, in the event that the offering expenses are less than our estimate of \$1,000,000, the amount of funds we intend to be held outside the Trust Account would increase by a corresponding amount.

If we file a bankruptcy or insolvency petition or an involuntary bankruptcy or insolvency petition is filed against us that is not dismissed, the proceeds held in the Trust Account could be subject to applicable bankruptcy law, and may be included in our bankruptcy estate and subject to the claims of third parties with priority over the claims of our shareholders. To the extent any bankruptcy claims deplete the Trust Account, we cannot assure you we will be able to return \$10.00 per share to our public shareholders. Additionally, if we file a bankruptcy or insolvency petition or an involuntary bankruptcy or insolvency petition is filed against us that is not dismissed, any distributions received by shareholders could be viewed under applicable debtor/creditor and/or bankruptcy laws as either a "preferential transfer" or a "fraudulent conveyance." As a result, a

bankruptcy court could seek to recover some or all amounts received by our shareholders. Furthermore, our board of directors may be viewed as having breached its fiduciary duty to our creditors and/or may have acted in bad faith, and thereby exposing itself and our company to claims of punitive damages, by paying public shareholders from the Trust Account prior to addressing the claims of creditors. We cannot assure you that claims will not be brought against us for these reasons. See “Risk Factors — Risks Relating to the Business Combination and Horizon — If, after Horizon distributes the proceeds in the Trust Account to Horizon’s public shareholders, it files a bankruptcy or winding-up petition or an involuntary bankruptcy or winding-up petition is filed against Horizon that is not dismissed, a bankruptcy or insolvency court may seek to recover such proceeds, and the members of Horizon’s board of directors may be viewed as having breached their fiduciary duties to Horizon’s creditors, thereby exposing the members of Horizon’s board of directors and Horizon to claims of punitive damages.”

Our public shareholders are entitled to receive funds from the Trust Account only (i) in the event of the redemption of our public shares if we do not complete our initial business combination by August 25, 2022, (ii) in connection with a shareholder vote to amend the Existing Organizational Documents (A) to modify the substance or timing of our obligation to allow redemption in connection with our initial business combination or to redeem 100% of our public shares if we do not consummate an initial business combination within 24 months from the closing of our initial public offering or (B) with respect to any other provisions relating to shareholders’ rights or pre-initial business combination activity or (iii) if they redeem their respective shares for cash upon the completion of our initial business combination. In no other circumstances will a shareholder have any right or interest of any kind to or in the Trust Account. In the event we seek shareholder approval in connection with our initial business combination, a shareholder’s voting in connection with the business combination alone will not result in a shareholder’s redeeming its shares to us for an applicable pro rata share of the Trust Account. Such shareholder must have also exercised its redemption rights described above. These provisions of the Existing Organizational Documents, like all provisions of the Existing Organizational Documents, may be amended with a shareholder vote.

## **Facilities**

We currently utilize office space at 600 Steamboat Road, Suite 200, Greenwich, CT 06830 from Sponsor and the members of our management team as its executive offices. We consider our current office space adequate for our current operations.

## **Employees**

We currently have three officers: Todd Boehly, Robert Ott and Kunal Aurora. These individuals are not obligated to devote any specific number of hours to our matters but they intend to devote as much of their time as they deem necessary to our affairs until we have completed our initial business combination. The amount of time they will devote in any time period will vary based on whether a target business has been selected for our initial business combination and the stage of the business combination process we are in. We do not intend to have any full time employees prior to the completion of our initial business combination.

## **Competition**

If we succeed in effecting the business combination, in all likelihood, we will face significant competition from Vivid Seats PubCo’s competitors. We cannot assure you that, subsequent to the business combination, we will have the resources or ability to compete effectively. Information regarding Vivid Seats PubCo’s competition is set forth in the sections entitled “Business of Vivid Seats — Competition.”

## **Legal Proceedings**

There is no material litigation, arbitration or governmental proceeding currently pending against us or any members of our management team in their capacity as such.

## Officers and Directors

Set forth below are the names, ages and positions of each of the individuals who serve as directors and officers of Horizon:

Name	Age	Position
Todd L. Boehly	47	Chief Executive Director, Chief Financial Officer and Director
David Minella	68	Director
Safwan Shah	59	Director
Haroon Mokhtarzada	41	Director
Michele Trogni	55	Director
Robert Ott	34	Vice President
Kunal Arora	28	Vice President

**Todd L. Boehly** has been our Chief Executive Officer and Director since June 12, 2020 and was appointed Chief Financial Officer and Chairman as well on July 15, 2020. Mr. Boehly is also Chief Executive Officer, Chief Financial Officer and Director of HAC II (NYSE: HZON). Mr. Boehly is the Co-founder, Chairman and Chief Executive Officer of Eldridge, a holding company with a unique network of businesses across finance, technology, real estate and entertainment. Prior to founding Eldridge in 2015, Mr. Boehly worked at Guggenheim Partners, the global asset manager, from 2002 to 2015, and was President of Guggenheim Partners from 2011 to 2015. Mr. Boehly is a Board member of Kennedy-Wilson. Mr. Boehly received his B.B.A. from the College of William & Mary in 1996. He has also studied at the London School of Economics.

We believe Mr. Boehly's qualifications to serve on our board of directors include his substantial experience building and managing businesses, his long-standing track record in identifying differentiated ideas, and unlocking value that will deliver access to a broad spectrum of potential acquisition opportunities.

**David Minella** has been a member of our board of directors since July 15, 2020. Mr. Minella has served as the managing member of Minella Capital Management LLC, since 2006. In 2007, Mr. Minella founded Prospect, a special purpose acquisition company that completed its \$250 million initial public offering that year. In 2009, Prospect merged with Kennedy-Wilson (NYSE: KW), creating a publicly-traded REIT with the capital to take advantage of distressed opportunities in the real estate market. Mr. Minella remains a Board member of Kennedy-Wilson. From 1997 to 2007, Mr. Minella served as the CEO and a director of Value Asset Management LLC. From 1995 to 1997, Mr. Minella served as the president and CEO of the asset management division of Liechtenstein Global Trust, a wealth and asset management firm. Mr. Minella received a BS in Accounting from Bentley University.

We believe Mr. Minella's qualifications to serve on our board of directors include his deep management expertise and his prior experience with special purpose acquisition companies.

**Michele Trogni** serves on our board of directors. Ms. Trogni has been an Operating Partner at Eldridge Industries since January 2020. She also currently serves as Chairman of SE2, a leader in technology-driven third-party administration services for the U.S. life and annuity insurance industry. As a technology innovator and agent of change, Ms. Trogni has operated as a global business leader in banking and financial services for more than 30 years. Since 2018, Ms. Trogni has been engaged in venture capital investing and advisory in the fintech space, and throughout her role at Markit was engaged in a number of fintech acquisitions. Ms. Trogni is currently a member of the Deutsche Bank Supervisory board, and also a board member of Morneau Shepell. From 2013 until 2017, Ms. Trogni was Executive Vice President of Consolidated Markets and Solutions for IHS Markit, where she led a portfolio of businesses that deliver data insights, analytics, and technology solutions to financial markets, engineering, and technology companies. Prior to joining Markit in 2013, Michele spent 25 years with UBS, the global wealth management and banking firm. Most recently, she served as UBS' CIO and Head of Operations. Ms. Trogni earned a BA (Honors) in Accounting from Northumbria University and is a Qualified UK Accountant.

We believe Ms. Trogni's qualifications to serve on our board of directors include her extensive experience in and knowledge of the banking and financial services industry.

**Safwan Shah** serves on our board of directors. Mr. Shah founded PayActiv, a Public Benefit Corporation and Certified B Corp, in 2012 and currently serves as its Chief Executive Officer. Prior to founding PayActiv, Mr. Shah founded Infonox in 1999, which was acquired by TSYS (now Global Payments) and served as its Group Executive from 2009 to 2011. Mr. Shah is a noted public speaker and his work has been featured in the New York Times, Wall Street Journal, LA Times and NPR. Mr. Shah's book, *It's About TIME*, calls for businesses to embrace the mantle of saving the world and has been published by Conscious Capitalism Press. In 2019, Mr. Shah received the George Norlin Award, the highest alumni honor for his devotion towards the betterment of society from Colorado University Boulder, where he got his PhD in aerospace engineering and worked for Bioserve Space Technologies, a NASA center for commercialization of space. Mr. Shah has taught at the Haas School of Business, Berkeley and Baskin School of Engineering in Santa Cruz, and is a graduate of the Stanford Executive Program. Mr. Shah earned a PhD Aero and MS EE from Colorado University Boulder and BS EEE from NED University of Engineering and Technology, Karachi.

We believe Mr. Shah's qualifications to serve on our board of directors include his substantial fintech experience.

**Haroon Mokhtarzada** serves on our board of directors. Mr. Mokhtarzada co-founded Truebill, a budget and bill tracker app, in 2015 and currently serves as its Chief Executive Officer. Prior to founding Truebill, Mr. Mokhtarzada served as the Chief Executive Officer and Chief Product Officer of Webs.com from 2001 to 2011. Webs.com was a popular website creation platform that grew to 50 million users before being acquired by Vistaprint where Haroon led digital product strategy from 2012 to 2016. Mr. Mokhtarzada has a BA in Economics from the University of Maryland, College Park and a JD from Harvard Law.

We believe Mr. Mokhtarzada's qualifications to serve on our board of directors include his significant entrepreneurial and fintech experience.

**Robert Ott** has served as Vice President since July 30, 2020. Mr. Ott is also Vice President of HAC II. Mr. Ott is a Senior Director at Eldridge Industries. Mr. Ott has been with Eldridge since its inception in 2015, where he has worked as in-house counsel focusing on negotiating and structuring transactions across the firm's investment platform. Mr. Ott currently serves on the Board of Directors of Maranon Capital. Prior to joining Eldridge, Mr. Ott worked as in-house counsel for the investment management business at Guggenheim Partners from 2011 to 2014. He earned his B.S. in Finance from the University of Maryland and his J.D. from William & Mary Law School. Mr. Ott is also a CFA charterholder.

**Kunal Arora** has served as Vice President since July 30, 2020. Mr. Arora is a Director at Eldridge Industries. Mr. Arora has been with Eldridge since its inception in 2015, where he has been involved in investments across corporate credit, structured credit, private equity, and venture capital. He currently helps oversee Eldridge's early stage and technology investment platform, focusing on fintech, insurtech, real estate, consumer, sports, and media. Mr. Arora currently serves on the Board of Directors and Credit Committee of Farmhold Financial. Prior to joining Eldridge, Mr. Arora was an investment associate at Security Benefit. He earned his B.A. from the University of Virginia.

## **Board of Directors and Terms of Office of Officers and Directors**

### **Committees of the Board of Directors**

Our board of directors has three standing committees: an audit committee, a compensation committee and a nominating and corporate governance committee. Subject to phase-in rules, NYSE rules and Rule 10A-3 of the Exchange Act require that the audit committee of a listed company be comprised solely of independent directors, and NYSE rules require that the compensation committee and the nominating and corporate governance committee of a listed company be comprised solely of independent directors.

### ***Audit Committee***

We have established an audit committee of the board of directors. David Minella, Haroon Mokhtarzada and Safwan Shah serve as members of our audit committee, and David Minella chairs the audit committee. Under the NYSE listing standards and applicable SEC rules, we are required to have at least three members of the audit committee, all of whom must be independent. Each of David Minella, Haroon Mokhtarzada and Safwan Shah meets the independent director standard under NYSE listing standards and under Rule 10-A-3(b)(1) of the Exchange Act.

Each member of the audit committee is financially literate and our board of directors has determined that David Minella qualifies as an “audit committee financial expert” as defined in applicable SEC rules.

The audit committee’s purpose and principal functions include:

- assisting board oversight of (1) the integrity of our financial statements, (2) our compliance with legal and regulatory requirements, (3) our independent registered public accounting firm’s qualifications and independence, and (4) the performance of our internal audit function and independent auditors; the appointment, compensation, retention, replacement, and oversight of the work of the independent auditors and any other independent registered public accounting firm engaged by us;
- pre-approving all audit and non-audit services to be provided by the independent auditors or any other registered public accounting firm engaged by us, and establishing pre-approval policies and procedures; reviewing and discussing with the independent auditors all relationships the auditors have with us in order to evaluate their continued independence;
- setting clear hiring policies for employees or former employees of the independent auditors;
- setting clear policies for audit partner rotation in compliance with applicable laws and regulations; obtaining and reviewing a report, at least annually, from the independent registered public accounting firm describing (1) the independent auditor’s internal quality-control procedures and (2) any material issues raised by the most recent internal quality-control review, or peer review, of the audit firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years respecting one or more independent audits carried out by the firm and any steps taken to deal with such issues;
- meeting to review and discuss our annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing our specific disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations”; reviewing and approving any related party transaction required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC prior to us entering into such transaction; and
- reviewing with management, the independent auditors, and our legal advisors, as appropriate, any legal, regulatory or compliance matters, including any correspondence with regulators or government agencies and any employee complaints or published reports that raise material issues regarding our financial statements or accounting policies and any significant changes in accounting standards or rules promulgated by the Financial Accounting Standards Board, the SEC or other regulatory authorities.

### ***Compensation Committee***

We have established a compensation committee of the board of directors. David Minella, Haroon Mokhtarzada and Safwan Shah serve as members of our compensation committee. Under the NYSE listing standards and applicable SEC rules, we are required to have at least two members of the compensation committee, all of whom must be independent. Each of David Minella, Haroon Mokhtarzada and Safwan Shah is independent and David Minella chairs the compensation committee.



The compensation committee's purpose and principal functions include:

- reviewing and approving on an annual basis the corporate goals and objectives relevant to our chief executive officer's compensation, evaluating our chief executive officer's performance in light of such goals and objectives and determining and approving the remuneration (if any) of our chief executive officer based on such evaluation;
- reviewing and making recommendations to our board of directors with respect to the compensation, and any incentive compensation and equity based plans that are subject to board approval of all of our other officers;
- reviewing our executive compensation policies and plans;
- implementing and administering our incentive compensation equity-based remuneration plans;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- approving all special perquisites, special cash payments and other special compensation and benefit arrangements for our officers and employees;
- producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing, evaluating and recommending changes, if appropriate, to the remuneration for directors.

Notwithstanding the foregoing, other than the payment to an affiliate of Sponsor of \$10,000 per month, for up to 24 months, for office space, utilities and secretarial and administrative support services and reimbursement of expenses, no compensation of any kind, including finders, consulting or other similar fees, will be paid to any of our existing shareholders, officers, directors or any of their respective affiliates, prior to, or for any services they render in order to effectuate the consummation of an initial business combination. Accordingly, it is likely that prior to the consummation of an initial business combination, the compensation committee will only be responsible for the review and recommendation of any compensation arrangements to be entered into in connection with such initial business combination.

The charter also provides that the compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser and will be directly responsible for the appointment, compensation and oversight of the work of any such adviser. However, before engaging or receiving advice from a compensation consultant, external legal counsel or any other adviser, the compensation committee will consider the independence of each such adviser, including the factors required by the NYSE and the SEC.

#### ***Nominating and Corporate Governance Committee***

The members of our nominating and corporate governance committee are David Minella, Haroon Mokhtarzada and Safwan Shah and David Minella serves as chair of the nominating and corporate governance committee.

The nominating and corporate governance committee's purpose and responsibilities include:

- identifying, screening and reviewing individuals qualified to serve as directors, consistent with criteria approved by the board of directors, and recommending to the board of directors candidates for nomination for appointment at the annual general meeting or to fill vacancies on the board of directors;
- developing and recommending to the board of directors and overseeing implementation of our corporate governance guidelines;
- coordinating and overseeing the annual self-evaluation of the board of directors, its committees, individual directors and management in the governance of the company; and
- reviewing on a regular basis our overall corporate governance and recommending improvements as and when necessary.

The charter also provides that the nominating and corporate governance committee may, in its sole discretion, retain or obtain the advice of, and terminate, any search firm to be used to identify director candidates, and is directly responsible for approving the search firm's fees and other retention terms.

We have not formally established any specific, minimum qualifications that must be met or skills that are necessary for directors to possess. In general, in identifying and evaluating nominees for director, the board of directors considers educational background, diversity of professional experience, knowledge of our business, integrity, professional reputation, independence, wisdom, and the ability to represent the best interests of our shareholders. Prior to our initial business combination, holders of our public shares will not have the right to recommend director candidates for nomination to our board of directors.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF HORIZON

*Unless the context otherwise requires, all references in this section to the "Company," "we," "us" or "our" refer to Horizon. The following discussion and analysis of Horizon's financial condition and results of operations should be read in conjunction with the financial statements and the notes thereto contained elsewhere in this proxy statement/prospectus/consent solicitation statement. Certain information contained in the discussion and analysis set forth below includes forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors. Please see "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors" in this proxy statement/prospectus/consent solicitation statement.*

### Overview

Horizon is a blank check company incorporated on June 12, 2020 as a Cayman Islands exempted company for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses.

Horizon's registration statement for its IPO became effective on August 20, 2020. On August 25, 2020, Horizon consummated its IPO of 50,000,000 units, at \$10.00 per unit, generating gross proceeds of \$500.0 million, and incurring offering costs of approximately \$19.6 million, inclusive of approximately \$12.1 million in deferred underwriting commissions. On August 26, 2020, the Horizon issued an additional of 4,398,433 units (the "Over-Allotment Units") at the initial public offering price at \$10.00 per unit pursuant to the exercise by the underwriters of a portion of their over-allotment option (the "Over-Allotment"), generating additional gross proceeds of approximately \$44.0 million, and incurring additional offering costs of approximately \$2.4 million, inclusive of an additional of approximately \$1.5 million in deferred underwriting commissions.

Simultaneous with the closing of the IPO, Horizon consummated the private placement (the "Private Placement") of 5,933,333 Horizon IPO Private Placement Warrants, at a price of \$1.50 per private placement warrant, generating aggregate total proceeds of \$8.9 million. In connection with the preparation of the consummation of the Over-Allotment, Sponsor purchased an additional 586,458 Horizon IPO Private Placement Warrants at a price of \$1.50 per private placement warrant, generating additional total proceeds of approximately \$0.9 million.

Upon the closing of the IPO and the Private Placement on August 25, 2020, approximately \$500.0 million (\$10.00 per unit) of the net proceeds of the IPO and certain of the proceeds of the Private Placement was placed in a trust account (the "Trust Account"), with Continental Stock Transfer & Trust Company acting as trustee. Upon the consummation of the over-allotment option on August 26, 2020, an additional amount of approximately \$44.0 million, for a total of approximately \$544.0 million was deposited to the trust account. The proceeds in the Trust Account are invested in United States "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act having a maturity of 185 days or less or in money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act which invest only in direct U.S. government treasury obligations, as determined by the company, until the earlier of: (i) the completion of a business combination and (ii) the distribution of the Trust Account as described below.

If Horizon is unable to complete a business combination within 24 months from the closing of the IPO, or August 25, 2022, Horizon will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the trust account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding public shares, which redemption will completely extinguish public shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the remaining shareholders and the board of directors, liquidate and dissolve, subject in each case to our obligations under Cayman Islands law to provide for claims of creditors and the other requirements of applicable law.

## **Proposed Business Combination**

On April 21, 2021, Horizon entered into the Transaction Agreement. In connection with the business combination, Horizon also entered into the Subscription Agreements and the Sponsor Agreement, as further described in “Proposal No. 1 — The Business Combination Proposal — Related Agreements.”

At the closing of the business combination, the Sponsor, Vivid Seats PubCo and Hoya Topco will enter into the Registration Rights Agreement.

## **Results of Operations**

Horizon’s entire activity since inception through March 31, 2021 related to Horizon’s formation, the preparation for the IPO, and since the closing of the IPO, the search for a prospective initial business combination. Horizon has neither engaged in any operations nor generated any revenues to date. Horizon will not generate any operating revenues until the closing and completion of our initial business combination, at the earliest.

For the period from June 12, 2020 (inception) through December 31, 2020 (as restated), Horizon had a loss of approximately \$17,600,000, which consisted of approximately \$538,000 in general and administrative expenses, approximately \$16,500,000 loss from changes in fair value of derivative warrant liabilities and approximately \$0.6 million of financing costs, offset by approximately \$18,000 in net gain on investments held in the Trust Account.

For the three months ended March 31, 2021, Horizon had net income of approximately \$7,700,000, which consisted of approximately \$8,600,000 gain in change in fair value of derivative warrant liabilities, partially offset by \$1,000,000 in general and administrative expenses.

## **Liquidity and Capital Resources**

As of March 31, 2021, we had approximately \$799,000 in our operating bank account.

Our liquidity needs have been satisfied prior to the completion of the IPO through the payment of \$25,000 from the Sponsor to cover for certain expenses on behalf of us in exchange for the issuance of the founder shares. In addition, the Sponsor advanced approximately \$185,000 to us under a promissory note, which was repaid on August 28, 2020. Subsequent to the IPO and Private Placement, our liquidity needs have been satisfied from the proceeds from the consummation of the Private Placement not held in the Trust Account. In addition, in order to fund working capital deficiencies or finance transaction costs in connection with a business combination, the Sponsor may, but is not obligated to, provide us working capital loans. To date, there were no amounts outstanding under any working capital loan.

Based on the foregoing, management believes that Horizon will have sufficient working capital and borrowing capacity from the Sponsor or an affiliate of the Sponsor or our officers and directors to meet our needs through the business combination. Over this time period, Horizon will be using these funds for paying existing accounts payable, identifying and evaluating prospective initial business combination candidates, performing due diligence on prospective target businesses, paying for travel expenditures, selecting the target business to merge with or acquire, and structuring, negotiating and consummating the business combination.

We continue to evaluate the impact of the COVID-19 pandemic and has concluded that the specific impact is not readily determinable as of the date of the balance sheet. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

## **Commitments and Contingencies**

### *Registration and Shareholder Rights*

Pursuant to the Registration and Shareholder Rights Agreement, dated August 25, 2020, the holders of the founder shares, Horizon IPO Private Placement Warrants and warrants that may be issued upon conversion of working capital loans (and any Horizon Class A ordinary shares issuable upon the exercise of the Horizon IPO Private Placement Warrants and warrants that may be issued upon conversion of working capital loans) are entitled to registration rights pursuant to a registration rights agreement. The holders of these securities are entitled to make up to three demands, excluding short form demands, that we register such securities. In addition, the holders have certain “piggy-back” registration rights with respect to registration statements filed subsequent to the completion of the initial business combination. We will bear the expenses incurred in connection with the filing of any such registration statements. At the Closing, Vivid Seats PubCo, Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement and enter into the Registration Rights Agreement.

### *Underwriting Agreement*

We granted the underwriters a 45-day option from the date of the prospectus to purchase up to 7,500,000 additional units at the initial public offering price less the underwriting discounts and commissions. On August 26, 2020, the company issued an additional of 4,398,433 units at the initial public offering price at \$10.00 per unit pursuant to the partial exercise of the underwrites’ over-allotment option.

The underwriter was entitled to an underwriting discount of \$0.20 per unit, or \$6.9 million in the aggregate, paid upon the closing of the IPO. In addition, \$0.35 per unit, or approximately \$12.1 million in the aggregate will be payable to the underwriter for deferred underwriting commissions. The deferred fee will become payable to the underwriter from the amounts held in the Trust Account solely in the event we complete a business combination, subject to the terms of the underwriting agreement.

In connection with the consummation of the sale of units pursuant to the Over-Allotment, the underwriters were entitled to an additional fee of approximately \$0.9 million paid upon Closing and an additional deferred underwriting commissions of approximately \$1.5 million.

## **Critical Accounting Policies and Estimates**

This management’s discussion and analysis of Horizon’s financial condition and results of operations is based on Horizon’s financial statements, which have been prepared in accordance with GAAP. The preparation of Horizon’s financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in Horizon’s financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to fair value of financial instruments and accrued expenses. We base our estimates on historical experience, known trends and events and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We have identified the following as our critical accounting policies:

### *Investments Held in the Trust Account*

Horizon’s portfolio of investments held in the Trust Account is comprised of U.S. government securities, within the meaning set forth in Section 2(a)(16) of the Investment Company Act, with a maturity of 185 days or less, or investments in money market funds that invest in U.S. government securities, or a combination thereof. The investments held in the Trust Account are classified as trading securities. Trading securities are presented on the balance sheets at fair value at the end of each reporting period. Gains and losses resulting from the change in fair value of these securities is included in net gain on investments held in the Trust Account in the accompanying statements of operations. The estimated fair values of investments held in the Trust Account are determined using available market information.

### *Class A Ordinary Shares Subject to Possible Redemption*

We account for the Horizon Class A ordinary shares subject to possible redemption in accordance with the guidance in FASB ASC Topic 480 “Distinguishing Liabilities from Equity.” Shares of Horizon Class A ordinary shares subject to mandatory redemption (if any) are classified as liability instruments and are measured at fair value. Shares of conditionally redeemable Horizon Class A ordinary shares (including Horizon Class A ordinary shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within our control) are classified as temporary equity. At all other times, shares of Horizon Class A ordinary shares are classified as shareholders’ equity. Our Horizon Class A ordinary shares features certain redemption rights that are considered to be outside of Horizon’s control and subject to the occurrence of uncertain future events. Accordingly, at March 31, 2021, 49,814,654 shares of Horizon Class A ordinary shares subject to possible redemption are presented as temporary equity, outside of the shareholders’ equity section of Horizon’s balance sheets.

### *Derivative Warrant liabilities*

We do not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. We evaluate all of our financial instruments, including issued warrants to purchase Horizon Class A ordinary shares, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480 and ASC 815-15. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is re-assessed at the end of each reporting period.

We issued 18,132,811 ordinary shares warrants to investors and 6,519,791 Horizon IPO Private Placement Warrants. All of our outstanding warrants are recognized as derivative liabilities in accordance with ASC 815-40. Accordingly, we recognize the warrant instruments as liabilities at fair value and adjust the instruments to fair value at each reporting period. The liabilities are subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in our statement of operations. The fair value of Horizon IPO Public Warrants, exercise of the over-allotment option and private placement were initially and subsequently measured at fair value using a Monte Carlo simulation model. Beginning as of December 31, 2020, the fair value of public warrants has been measured based on the listed market price of such Horizon IPO Public Warrants. The Horizon IPO Private Placement Warrants continue to be measured at fair value using a Monte Carlo simulation model through March 31, 2021.

### *Net Income (Loss) Per Ordinary Share*

We comply with accounting and disclosure requirements of FASB ASC Topic 260, “Earnings Per Share.” Net income (loss) per share is computed by dividing net income (loss) by the weighted average number of ordinary shares outstanding during the period, excluding ordinary shares subject to forfeiture. Weighted average shares were reduced for the effect of an aggregate of 194,142 Horizon Class B ordinary shares that were subject to forfeiture if the over-allotment option was not exercised by the underwriters. On October 4, 2020, these shares were forfeited as the remainder of the over-allotment option expired unexercised. We have not considered the effect of the warrants sold in the initial public offering and private placement to purchase an aggregate of 24,652,602 shares of Horizon Class A ordinary shares in the calculation of diluted earnings per share, since their inclusion would be anti-dilutive under the treasury stock method. As a result, diluted per share is the same as basic loss per share for the periods presented.

Horizon’s statement of operations includes a presentation of income (loss) per share for ordinary shares subject to redemption in a manner similar to the two-class method of income per share. Net income per share, basic and diluted for Horizon Class A ordinary shares is calculated by dividing the investment income earned on the trust account, by the weighted average number of shares of Horizon Class A ordinary shares outstanding since the initial issuance. Net loss per share, basic and diluted for Horizon Class B ordinary shares is calculated by dividing the net loss, less income attributable to Horizon Class A ordinary shares, by the weighted average number of shares of Horizon Class B ordinary shares outstanding for the period.

### *Recent Accounting Pronouncements*

Our management does not believe that any recently issued, but not yet effective, accounting pronouncements, if currently adopted, would have a material impact on our financial statements.

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

As of March 31, 2021, Horizon did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K and did not have any commitments or contractual obligations.

### **JOBS Act**

On April 5, 2012, the JOBS Act was signed into law. The JOBS Act contains provisions that, among other things, relax certain reporting requirements for qualifying public companies. We will qualify as an “emerging growth company” and under the JOBS Act will be allowed to comply with new or revised accounting pronouncements based on the effective date for private (not publicly traded) companies. We are electing to delay the adoption of new or revised accounting standards, and as a result, we may not comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. As such, our financial statements may not be comparable to companies that comply with public company effective dates.

Additionally, Horizon is in the process of evaluating the benefits of relying on the other reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, if, as an “emerging growth company,” Horizon chooses to rely on such exemptions Horizon may not be required to, among other things, (i) provide an auditor’s attestation report on Horizon’s system of internal controls over financial reporting pursuant to Section 404, (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act, (iii) comply with any requirement that may be adopted by the PCAOB regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements (auditor discussion and analysis) and (iv) disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the CEO’s compensation to median employee compensation. These exemptions will apply for a period of five years following the completion of Horizon’s initial public offering or until Horizon is no longer an “emerging growth company,” whichever is earlier.

## BUSINESS OF VIVID SEATS

Unless the context otherwise requires, all references in this subsection to the “Company,” “we,” “us” or “our” refer to the business of Vivid Seats prior to the Closing, which will be the business of Vivid Seats PubCo and its consolidated subsidiaries following the Closing.

### Our Business

#### ***Our Mission - Everyone Should “Experience It Live”***

Vivid Seats is a leading marketplace that allows fans of live events to connect seamlessly with third-party ticket sellers through our technology platform that spans the ecosystem. We believe Vivid Seats is a leading marketplace based on a combination of (1) third party estimates of the overall market size, including estimates provided in a 2017 report prepared for Vivid Seats by a third party consulting firm, (2) publicly available information including our competitors’ filings with the SEC and (3) internal company information from our Skybox platform that provides insights into volumes across marketplaces representing a meaningful portion of the overall secondary ticketing market.

Our mission is to connect buyers and sellers, empowering fans to *Experience It Live*. We believe live events deliver some of life’s most exciting moments and our platform provides customers (both on the buy and sell side) with an easy-to-use, trusted marketplace experience that ensures fans can attend live events and create memories that last a lifetime. During the years ended December 31, 2019 and 2020 we generated \$469 million and \$35 million of revenues, respectively, and \$2,280 million and \$347 million of Marketplace Gross Order Value (“Marketplace GOV”).

We operate a technology platform and marketplace that helps buyers easily purchase tickets from third-party ticket sellers and discover and attend live events while enabling third-party sellers to seamlessly manage their end-to-end operations. We unite millions of buyers with thousands of sellers. We have mutually beneficial partnerships with a number of content rights holders, media partners, product and service partners and distribution partners.

Our platform is built on years of customer transactional and engagement data that provides us with deep insights into how to best connect buyers with the experiences they seek. We understand the feeling of anticipation as the lights go down, the excitement of come-from-behind wins, and the passion for guitar solos, and work diligently to enable fans to experience as many of these moments as possible. In 2019, we connected over five million buyers to over 200,000 unique events. Our marketplace connects fans who cheer on their home-town sports team, rock out to their favorite band or attend acclaimed theater productions with ticket sellers that choose list a wide variety of inventory on our platform.

### Our Ecosystem

We operate our business in two segments, Marketplace, which accounted for 7.2 million orders in 2019 (1.1 million in 2020), and Resale, which accounted for 0.3 million orders in 2019 (0.1 million orders in 2020).

Through our Marketplace segment, we act as an intermediary between ticket buyers and third-party ticket sellers. We facilitate the sale of tickets by third-party ticket sellers through our marketplace on our website [vividseats.com](#) and through our Vivid Seats native apps (collectively, our “Owned Properties”). Buyers use our Owned Properties to discover and purchase live event tickets from third-party sellers while staying up to speed on developments with their favorite teams, artists and performers as part of a curated and integrated shopping experience. We also provide a private label offering to third-party distribution partners with software solutions that enable them to sell tickets on their own branded websites utilizing our platform, infrastructure, listings and customer service capabilities (our “Private Label”).

Third-party sellers are an equally important part of our ecosystem and supply a wide variety of tickets and other listings to our buyers. We have deep and longstanding relationships with a broad range of third-party ticket



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sellers and strive to proactively solve the challenges facing all members of our ticket seller community. We support many of these sellers with our proprietary, free-to-use Skybox platform, an enterprise resource planning (“ERP”) tool that helps sellers manage their inventory, adjust pricing and fulfill orders. In addition, we provide sellers with industry-leading customer service and balanced payment terms.

We created our separate Resale business to primarily serve as an internal research and development group focused on creating best in class seller software and tools. Skybox features are first tested and iterated on thoroughly before releasing them to the seller community, and thus ensures we can continue innovating to meet the needs of our seller community. In that way, this separate business segment makes tickets available for resale.

Our ability to offer buyers comprehensive event listings at competitive prices along with award winning customer service starts the self-feeding benefits of our flywheel. As more buyers come to our platform, we enable sellers to successfully sell more of their tickets. This, in turn, leads to more listings from more sellers on our platform, which results in more buyers transacting in our marketplace. These relationships combine to create an ongoing flywheel effect as the scale and vibrancy of our marketplace reinforces the value and marketplace benefits for both our buyers and sellers.



**Our Platform**

Modern Technology that Delivers a Seamless Experience

Our “built in the cloud” technology platform supports all elements of the fan experience including searching for an event, buying or selling a ticket, attending an event, engaging with curated content and contacting customer support. Our technology mission is to continually innovate and deliver market-leading products and services that support the evolving needs of our buyers and sellers. Our scalable, reliable and performant systems power a consumer and partner-facing platform to support ticket buyers while our tools power inventory management and ticket fulfillment for sellers.

Buyers Technology and Products

Our consumer systems are architected to respond to the dynamic, fast-paced landscape of the live events industry. Our marketplace, supported by proprietary digital marketing technology and search algorithms, is adept at capitalizing on demand opportunities, bringing buyers to our platform for their desired event and seamlessly supporting their shopping and checkout experience. We continually invest in optimizing our consumer-facing technology across our website, native iOS and Android applications. We see opportunities to create engaging and delightful experiences through enticing listings, relevant content, curated recommendations and a seamless checkout process. We power that experience through a host of technology systems that consider historical transactional and engagement behavior, proximity and consumer preferences. We leverage the latest technologies

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in search, customer relationship management and data analytics and incorporate these capabilities into our advanced and flexible infrastructure.

### *Seller Technology and Products*

Our best-in-class enterprise resource planning tool, Skybox, enables sellers to manage, price and fulfill their inventory. Utilizing a cloud-based technology infrastructure and a web-based application interface, Skybox serves as an asset to the entire seller ecosystem. We invest in building capabilities that serve the needs of small, medium and large sellers alike, including offering free integrations to other inventory distribution channels. We believe that Skybox allows sellers to more effectively move their inventory, which in turn could help increase the number of orders transacted in our marketplace.

### *Partner Technology and Products*

Our platform allows distribution partners to bring additional consumer demand into our ecosystem. Distribution partners can integrate our event feeds and ticket listings into their online properties through application programming interfaces (“APIs”) or fully-managed web sites. We also provide turn-key checkout, customer service and fulfillment. This offering increases the number of buyers and sellers accessing our platform, allowing us to leverage our scale to drive operational and marketplace efficiencies while enabling our partners to offer additional products to their customers.

### *Technology Infrastructure*

Our platform is extensible and flexible, allowing us to integrate with new partners, target new customer channels, access new supply bases and connect with complementary technologies.

We continue to build and modernize our technology infrastructure to support the growth of our marketplace. We have scalable, reliable systems which allow us to handle increases from unpredictable surges in site traffic across our fan, seller and partner platform. We utilize a host of technology availability, monitoring and scaling solutions to respond to rapid changes for a business that runs 24/7.

We utilize a service-oriented technology architecture. This modular approach, in which each individual component of our architecture is independent from one another, enables us to innovate quickly, increase development velocity and leverage new development technologies available in the market. Our cloud-based architecture lets us efficiently scale our platform to meet changing levels of consumer demand and evolving seller needs.

### *Third-Party Developers*

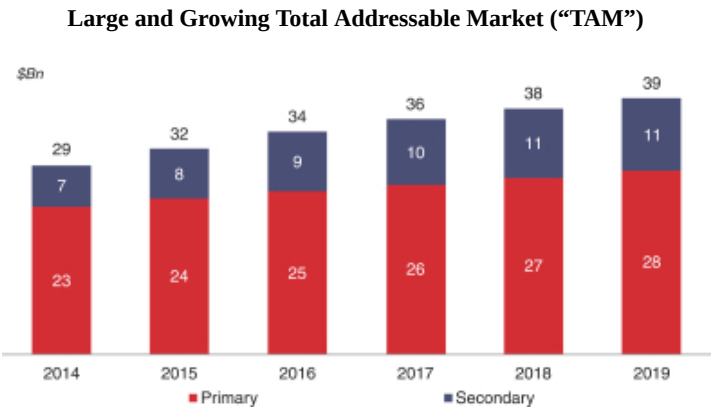
Our APIs allow a broad ecosystem of third-party tools and systems to integrate with the Vivid Seats platform. Third-party tools integrate with our marketplace Broker API and Broker Portal to streamline and automate the sales and fulfillment process. Our Skybox ERP API integrates with numerous third-party automation and workflow management solutions, allowing sellers to leverage other applications and functions to support the specific needs of their business.

## **Our Industry Opportunity**

The U.S. live event ticketing market is large with a long history of secular growth. Consumer sentiment over the past few decades, accelerated by the coming of age of the millennial generation, has been shifting to favor experiences over material goods. Numerous studies have found that spending money on life experiences brings individuals more lasting joy than spending the same amount on physical goods. According to the Bureau of Economic Analysis, Gross Domestic Product attributable to arts, entertainment, recreation, accommodation and food services was nearly \$1.6 trillion in 2019, up from \$979 billion a decade ago.

Moreover, the rise of music streaming services in the mid-2000s forced artists to become increasingly reliant on generating income from touring rather than album sales. With less revenue from album sales, performers have turned to additional live performances to fill the gap. This behavior shift has resulted in an increasing number of multi-city road shows and music festivals with the top 100 North American tours grossing over \$3.7 billion in 2019, up nearly \$1 billion from 2015, according to Pollstar 2019 Business Analysis on the state of the concert business. The rise of the “Experience Economy”, along with the dynamics of artists financially incentivized to tour, has created a virtuous supply and demand cycle.

Based on a 2017 report prepared for us by a third party consulting firm and internal estimates derived from figures disclosed to us under confidentiality agreements as well as publicly available information, we believe the U.S. primary and secondary live event ticketing market is \$39 billion as of 2019, with the secondary live event ticketing market estimated at \$11 billion, representing growth in the secondary live event ticketing market of 57% since 2014.



Buyers increasingly value flexibility and the ability to attend their desired events without needing to plan months in advance. The secondary ticketing market supports buyers by providing a liquid, efficient and flexible mechanism to purchase tickets at their convenience. Many tickets are initially offered far in advance of the event date and are often bundled as part of larger packages such as season tickets. These distribution practices can limit consumer convenience and choice as buyers are asked to commit to plans and make a financial outlay months in advance of the event and, in the case of season tickets, purchase tickets for events they may not want or be able to use.

The secondary live events ticketing market alleviates these pain points by allowing buyers the flexibility to purchase tickets when they want, sometimes hours before an event, and to attend otherwise sold out events. Likewise, these buyers are also able to sell tickets if plans change. Prices reflect real-time supply and demand. In many instances, tickets are available on the secondary market for below face value and help teams and artists fill venues.

**Impacts of the COVID-19 Pandemic**

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic and, within a few days, the world of live events came to a standstill. The global pandemic has had a disproportionate impact on the live events industry with the cancellation or postponement of thousands of productions. Global live music revenues are down an estimated \$18 billion and major sports leagues have lost an estimated \$13 billion in revenue. Theaters across the United States have largely been shuttered since March 2020 with Broadway in New York City alone down an estimated \$1.5 billion in ticket sales for 2020 based on 2019 ticket sales.

While the pandemic has had a dramatic and negative impact on the live events industry over the past year, we anticipate a strong recovery once it is safe to resume large capacity events. Sports teams, artists, venues and promoters are yearning for the return of audiences. Artists are reliant on touring income and are eager to get back to work to help support the nearly \$30 billion industry. As of May 2021, major sports leagues have seen most teams return to having fans in attendance at reduced capacity and new concert onsales have begun.

Likewise, buyers are yearning for the return of live experiences, resulting in significant pent-up demand. According to a 2020 Live Nation Benchmark Study, 90% of U.S. fans are likely to attend a live event concert or music festival when it is deemed safe to do so. After a year where Americans have largely been confined to their homes and the federal government has distributed nearly \$1 trillion in direct payments to taxpayers, there has been a large increase in household savings. This has resulted in approximately \$1.9 trillion in cumulative U.S. personal savings between March 2020 and February 2021 relative to a baseline with no pandemic, according to the Bureau of Economic Analysis. We believe we will disproportionately benefit from this increase in savings, as the pent-up consumer demand for experiences will result in a surge in spending on experiences such as live events, travel and dining once the pandemic is over.



We have a long history of delivering consistent Marketplace GOV growth, profitability and cash generation, but our business was not immune to the impacts of the pandemic. Starting in mid-March 2020, we experienced a precipitous drop in new orders. At the same time, we experienced an unprecedented increase in event cancellations as teams, artists, theaters, venues and promoters scrambled to postpone or cancel events.

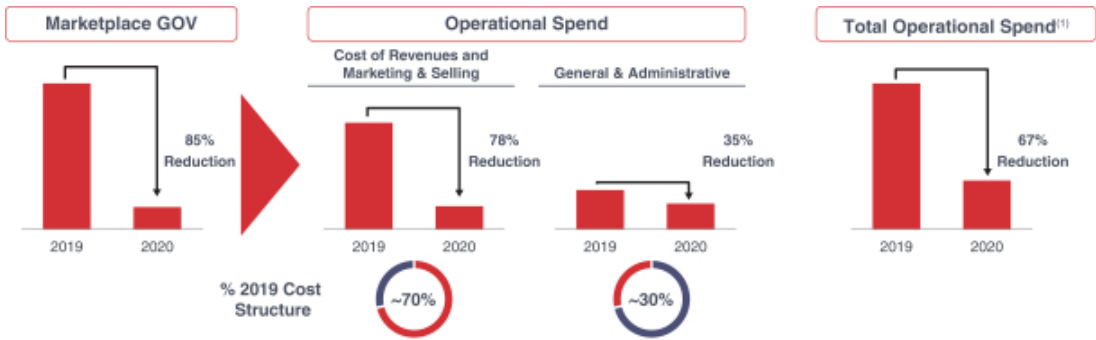
The sharp decline in new orders, coupled with the unprecedented increase in event cancellations, negatively impacted our revenue and profitability. For example, Revenues for the year ended December 31, 2019 were \$468.9 million (including the impact of \$16.1 million of reductions from cancellation charges under the normal course of business), while Revenues for the year ended December 31, 2020 were \$35.1 million (including the impact of \$83.4 million of reductions from cancellation charges).

We took quick action to mitigate risk, reduce expenses and increase liquidity. Our Marketplace GOV declined 85% in 2020 as compared to 2019. In response, we reduced our cost of revenues and marketing expenses by 78%. We also took actions to reduce our general and administrative expenses by 35% while retaining critical expertise across functional areas. Overall expenses were reduced by 67% in 2020 as compared to 2019.

In May 2020, we increased liquidity by entering into the May 2020 First Lien Credit Agreement (as defined below), which provided for a \$260 million term loan, while simultaneously retiring our \$50 million revolving credit facility. We utilized the additional funding to support our buyers by offering a choice between a cash refund or credit from our loyalty program, Vivid Seats Rewards, along with a donation to charity. We believe

these options provided our buyers with greater flexibility and may allow us to maintain customer loyalty despite the unprecedented event cancellations that occurred during the pandemic. For sellers, we focused on maintaining liquidity in the ecosystem to enable them to survive the pandemic and resume selling tickets as events return.

COVID-19 Impact Mitigated by Swift Operational Decisions



(1) Total Operational Spend includes Cost of Revenues, Marketing and Selling and General & Administrative

Our Strengths

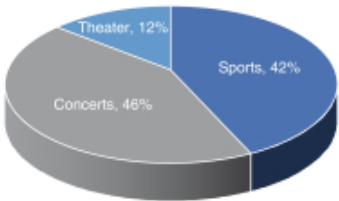
We believe we have several competitive advantages that will enable us to maintain and grow our position as a leading secondary ticketing marketplace:

We Offer Incredible Selection

We offer a wide-ranging breadth and depth of listings and ticketing options to our buyers that cover most major live events. We have access to a broad set of inventory because of our long-standing seller relationships and the tools we provide that position Vivid Seats as the marketplace of choice for many sellers to list and sell their tickets. As of 2019, our marketplace supported over 12 million cumulative customers and in 2019, we hosted over 2,500 sellers on our Skybox platform with over 3,400 total sellers listing inventory on our marketplace across over 200,000 unique productions. A large seller base provides us with a wide assortment of ticketing options for our buyers, while also limiting risk, as the loss of any one seller will not materially impact the breadth of available listings.

The tickets we sell on our marketplace are diversified across sports, concerts and theater with 2019 Marketplace GOV comprised of 46% from concerts, 42% from sports and 12% from theater. A diversified mix across the three major event categories broadens our opportunities, limits exposure to any particular category and reduces seasonal variation in volumes.

Event mix as a percentage of 2019 Marketplace GOV



Within each of our categories, there are a broad range of productions that provide further diversification:

- *Sports*: The sports category includes four major professional leagues (MLB, NFL, NBA and NHL) and college sports as well as a wide variety of other sporting activities including golf, car racing, rodeo, boxing and mixed martial arts.
- *Concerts*. The concert category includes musical acts across a broad range of genres touring across major venues, small venues and music festivals.
- *Theater*. The theater category includes Broadway and off-Broadway plays and musicals, family entertainment events, comedy acts and speaker series.

### ***We Deliver Value***

Our scale, modern technology stack, variable cost structure and lean operations allow us to offer tickets at competitive prices. We believe these attributes allow us to frequently offer lower prices than our competitors.

We also offer Vivid Seats Rewards, the only loyalty program among our scale competitors, where buyers can earn rewards on purchases made on the Vivid Seats mobile applications or website. Our loyalty program delivers additional value to our buyers and further improves our value proposition relative to marketplaces that do not offer a similar programs.

Our loyalty program also provides customers with financial incentives to complete future transactions on our marketplace while creating additional opportunities for customer interaction, improved personalization and promotions, and increased engagement. We are committed to enhancing this offering over time to deliver the best value and user experience to our buyers.

For our sellers, we offer full-service support, open integration, and value-added technology, including our free-to-use Skybox platform. We provide our sellers with access to a broad range of distribution channels while offering attractive payment terms. We have an in-house relationship management team for our seller community as well as a dedicated in-house team that supports Skybox users.

### ***We Provide Peace of Mind***

As a marketplace, we provide a reliable and secure experience for fans to shop for tickets and other listings made available by sellers. Vivid Seats provides straightforward information that enables a quick and transparent ticket buying process. We have a dedicated anti-fraud team to monitor transactions to ensure a safe and secure environment for all users of our platform.

Vivid Seats has a track record of providing excellent customer service and we are committed to achieving customer satisfaction. For two years in a row, we have been named #1 in *Newsweek* America's Best Customer Service for Ticketing Services. We provide a 100% Buyer Guarantee for our customers, designed to deliver peace-of-mind, safety and security. As a full-service provider, we believe our customers deserve dedicated and helpful assistance. We believe our customers' private and personal information should stay that way. We guarantee valid and authentic tickets will be delivered in time for the event and we rigorously evaluate all sellers and work with them to ensure orders are delivered on time.

### ***We are Innovative***

We have a history of bringing innovative solutions to the market and we take pride in our ability to rapidly develop new products and features. We debuted our proprietary digital marketing systems in 2010, designed to maximize return on investment from digital marketing spend, and have continually upgraded these systems since. The proprietary algorithms ensure high responsiveness and efficiency in reacting to market trends and changes.

In 2014, we launched our Skybox ERP system and in the same year deployed our Private Label offering to support distribution partners. In 2015, we launched our native iOS and Android mobile applications to capitalize on the increasing usage of mobile applications. In 2019, we deployed our loyalty program, Vivid Seats Rewards while redesigning and relaunching our mobile application. In 2020, we expanded our seller fulfillment offering to support seller operations in a flexible and cost-effective manner.

We maintain a robust roadmap of additional products, features and services that we seek to deploy in the coming years that will support a seamless experience for our buyers and sellers.

## **Our Growth Strategies**

### ***Increase Our Brand Awareness and Affinity***

We believe we offer the best value to buyers and sellers in the secondary ticketing market and want to amplify our message to maximize awareness of what makes us different. Live event tickets are a significant purchase, and the more customers understand our value proposition, appreciate that we are a trusted counterparty and develop an affinity for our brand, the more transactions we expect to complete. We strive to have Vivid Seats be the first ticketing marketplace buyers and sellers consider when searching for, purchasing or selling tickets.

### ***Increase Customer Engagement***

We want to connect with our customers and we want our customers to connect with us. Our mission is to close the awareness gap to ensure that fans know when their favorite artists are performing near them. Accordingly, we strive to improve the discovery process to help fans attend more of their favorite events.

We seek to provide appealing content to our customers to enhance their experience while driving continued engagement. Additional areas of opportunity include providing access to live stream performances, blog content and industry news alongside more personalized recommendations with insights on market trends. Providing fresh content to customers motivates them to open the Vivid Seats mobile application or visit our website regularly. We think of engagement as an additional gear in our growth flywheel that will allow it to spin even faster.

### ***Increase Customer Retention***

Once customers transact with Vivid Seats, many return and complete additional transactions. We seek to increase both the number and frequency of these repeat customer visits.

We believe the combination of our Vivid Seats Rewards program, increasing brand awareness and affinity and ongoing product improvements to drive a more personalized and engaging experience will result in more customers viewing Vivid Seats as their ticketing platform of choice. As buyers gain a full appreciation of our value proposition relative to other marketplaces, we anticipate they will increasingly visit our site and complete more transactions.

### ***Develop Additional Seller Tools and Services***

We enable our sellers to thrive by offering products and services that support their business needs. We have a proud history of innovating to support our sellers and continue to develop additional tools and service offerings that address existing problems or add efficiency to the transaction and fulfillment process. As we increase the quality and depth of our seller tools, we believe we will attract additional sellers and listings to our platform, reinforce our existing seller relationships and reduce friction, which will lead to more orders in our marketplace.

### **Expand our Partnerships**

We consider partnerships to be an important and additive part of our ecosystem. Our partner ecosystem includes:

- *Content Rights Holders (“CRH”)*. Teams, leagues and venues engage with us in partnerships in which we receive certain marketing or advertising rights in exchange for a monetary commitment. We may also receive blocks of tickets, or the right to purchase tickets, from CRH partners.
- *Media Partners*. We have partnered with well-known media companies to integrate our branding, promotions and links to allow users to access and purchase tickets. Working with media partners allows us to broaden our reach to their users while enhancing the consumer experience.
- *Product and Service Partners*. We partner with providers of related products and services when they can be additive to our customer experience. We offer customers the option to purchase ticket insurance and are exploring several relevant adjacencies that we anticipate will be additive to the buyer experience.
- *Distribution Partners*. We offer a Private Label offering to third-party distribution partners that allows them to own the customer relationships while leveraging our platform, inventory and customer service.

We will continue to seek out mutually beneficial partnerships in our existing ecosystem and other categories that improve the experience for our customers while leveraging our existing brand, traffic and reputation.

### **Our People and Values**

We aim to hire talented, dedicated and diverse team members. As of December 31, 2020, our team is comprised of 236 full-time employees and 137 contractors. We have two primary office locations, with our headquarters in Chicago, Illinois and an auxiliary location in Toronto, Ontario. Our passion and excitement for live events drives us to provide the best experience and service to our buyers, sellers and partners.

Our Vivid Seats Values ground us in all that we do:

- *We are Decisively United*. We reject islands and silos in favor of collaboration and alignment. Best thinking wins and we commit together.
- *We are Proudly Accountable*. We take ownership for our results and humbly accept our role in both wins and losses.
- *We are Ambitiously Unconventional*. We are not afraid to try new things. If there is a better way to do something, we will find it. We are firm on delivering outcomes, but flexible on approach.
- *We are Objective and Experimental*. We challenge assumptions. We use data to challenge existing processes and drive improvement through continuous testing.
- *We are Fiercely Dedicated*. We are fanatical about live events and delivering amazing experiences for buyers, sellers and partners.
- *We are Community Enhancers*. We believe we have a responsibility to give back:
  - Vivid Seats is proud to partner with Chicago’s Lurie Children’s Hospital, one of the country’s top-ranked pediatric institutions, to bring joy to patients and their families. Over the past two years, Vivid Seats employees have recorded bedtime stories, donated wish list gifts and hosted patients and their families at live events.
  - In 2020, the live entertainment industry was devastated by the global pandemic, leaving thousands with an uncertain future. Vivid Seats and its customers donated millions of dollars to the Recording Academy’s charity, MusiCares, to support those in the music community and their families.



## Competition

Our business faces significant competition from other national, regional and local primary and secondary ticketing service providers to secure new and retain existing sellers, buyers and distribution partners on a continuous basis. We also face competition in the resale of tickets from other resale marketplaces and other ticket resellers. The advent of new technology, particularly as it relates to online ticketing, has amplified this competition. Our key competitors include StubHub, Ticketmaster, SeatGeek and TicketNetwork. In addition, we may face competition from event producers to the extent they engage in direct ticket sales.

## Facilities

We do not own any real property. We lease our headquarters at 111 N. Canal Street, Suite 800, Chicago, IL 60606 pursuant to a lease agreement that expires on November 30, 2025. We consider our current office space sufficient to meet our current needs and that suitable additional space will be available as and when needed.

## Legal Proceedings

### *Nellis, et al. v. Vivid Seats Ltd., et al.*

Vivid Seats LLC is defending a putative class action pending in the United States District Court for the Northern District of Illinois, captioned *Nellis, et al. v. Vivid Seats Ltd., et al.*, Case No. 1:20-cv-02486 (N.D. Ill.) (“*Nellis*”). The lawsuit was filed on April 23, 2020 and alleges claims on behalf of the Named Plaintiffs and Vivid Seats LLC customers in the United States, its territories and Canada (as well as proposed subclasses of customers in Florida, Illinois, California and New Hampshire) who used Vivid Seats LLC’s marketplace to purchase tickets from third-party sellers to any event which was subsequently cancelled, postponed, and/or rescheduled and who did not receive full compensation. The Named Plaintiffs’ complaint asserts claims for breach of contract, breach of implied contract, violation of the Illinois Ticket Sale and Resale Act, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, violation of the Florida Deceptive and Unfair Trade Practices Act, violation of the New Hampshire Regulation of Business Practices for Consumer Protection — Consumer Protection Act, violations of the California Unfair Competition Law, conversion, unjust enrichment, negligent misrepresentation and breach of express warranty. Plaintiffs seek actual damages and equitable monetary relief, punitive damages, statutory damages, declaratory judgment, costs and attorneys’ fees.

Vivid Seats LLC denies the allegations and is prepared to vigorously defend the case. On June 7, 2020, the Court adopted the parties’ proposed schedule for briefing Vivid Seats LLC’s motion to compel arbitration and ordered Vivid Seats LLC to file a motion to compel arbitration by July 13, 2020. The parties, however, sought extensions of the briefing schedule for the motion to compel in light of either proceedings in front of the Judicial Panel on Multidistrict Litigation relating to the matter or the prospect of and/or progress toward a settlement. To that end, the parties engaged in a day-long mediation on November 18, 2020 with the Honorable Wayne R. Andersen (Ret.), and on March 3, 2021, the parties reached a settlement agreement. Under the terms of the settlement agreement, Vivid Seats LLC would extend the expiration date to December 31, 2022 for the credits it has already provided to customers in the United States, its territories and Canada who, prior to the date of preliminary approval of the settlement, purchased tickets through Vivid Seats LLC’s marketplace to an event that, at any time from September 29, 2016 through the date of preliminary approval of the settlement, was cancelled. If these customers would prefer a cash payment instead of credit, they are entitled to elect a payment equal to the price of the tickets they purchased, inclusive of base price, fees and delivery charges, exclusive of any insurance charges and less any amounts paid with gift cards, store credit or loyalty credit. Vivid Seats LLC will create a common fund of \$7.5 million to cover the costs of these payments as well as other costs of administering the settlement. If the common fund is oversubscribed, payments to claimants will be decreased *pro rata*, in which case claimants would be entitled to retain a portion of the credits that they were initially issued.

The settlement agreement also provides relief to Vivid Seats LLC customers in the United States, its territories and Canada who, prior to the date of preliminary approval of the settlement, purchased tickets through

Vivid Seats LLC's marketplace to an event that, at any time from September 29, 2016 through the date of preliminary approval of the settlement, was postponed or rescheduled and has not yet occurred. Specifically, the parties will ask the Court to enter an injunction whereby, if the postponed or rescheduled event to which a Vivid Seats LLC customer has purchased tickets is cancelled, the customer will automatically receive a credit equal to the price of the tickets they purchased, inclusive of base price, fees and delivery charges, exclusive of any insurance charges and less any amounts paid with gift cards, store credit or loyalty credit. That credit will be valid until December 31, 2022. If these customers would prefer a cash payment rather than a credit, they can elect a cash payment equal to the price of the tickets they purchased, inclusive of base price, fees and delivery charges, exclusive of any insurance charges and less any amounts paid with gift cards, store credit or loyalty credit by submitting a request for such a payment to Vivid Seats LLC within 21 days of notice of the cancellation of the event at issue.

On March 11, 2021, the Named Plaintiffs submitted the settlement agreement to the Court and filed a motion for preliminary approval of the class settlement. On April 1, 2021, the Court entered an order granting preliminary approval of the settlement agreement. The hearing on the motion for final approval of the settlement agreement is currently scheduled for August 10, 2021. On July 2, 2021, however, the Named Plaintiffs and Vivid Seats filed a joint motion to request that the Court approve supplemental notice to approximately 3% of the settlement class. The motion also requests that the Court modify the current schedule and extend the hearing for final approval by at least one hundred five (105) days after the Court approves the request for supplemental notice.

If the settlement agreement is finally approved by the Court, it will resolve all claims of all persons or entities residing in the United States, its territories or Canada who at any time on or before April 1, 2021 purchased a ticket through Vivid Seats LLC's marketplace to an event that, at any time from September 29, 2016 through April 1, 2021, was cancelled or was postponed or rescheduled and has not yet occurred. Should the settlement agreement not be finally approved, however, by the Court, Vivid Seats LLC expects to vigorously defend against the case and to move to compel arbitration on a non-class basis and to dismiss the action.

#### ***Elster v. Vivid Seats, Inc., et al.***

Vivid Seats LLC is also defending a putative class action that is currently pending in the Superior Court of the State of California for the County of Contra Costa and captioned Elster v. Vivid Seats, Inc., et al., Case No. C20- 01959 ("Elster"). This action was originally filed in the Superior Court of the State of California for the County of Contra Costa on September 29, 2020, after which Vivid Seats LLC filed a notice of removal to the United States District Court for the Northern District of California on October 30, 2020. Plaintiff asserts a claim for unfair business practices in violation of California Business and Professions Code Section 17200 et seq. on behalf of himself and other California residents. Plaintiff seeks a public injunction requiring (1) Vivid Seats LLC to give individualized notice to all California residents who are Vivid Seats LLC customers holding tickets to events that have been postponed or cancelled, informing said customers of their rights to request a full refund, and (2) Vivid Seats LLC to establish an effective monitoring mechanism to ensure Vivid Seats LLC's continued compliance with the terms of the injunction. Plaintiff also seeks full restitution permitted by law and attorneys' fees and costs.

On November 30, 2020, Plaintiff moved to remand the case to the Superior Court of Contra Costa. Vivid Seats LLC filed an opposition to the motion on December 30, 2020. Plaintiff filed a reply in support of the motion to remand on January 13, 2021. The Court held a hearing on the motion to remand on February 4, 2021 but did not rule at that time. The Court instead ordered the parties to submit supplemental briefs regarding the issue of the amount in controversy. Vivid Seats LLC filed a supplemental submission in support of its opposition to Plaintiff's motion to remand on February 11, 2021, and Plaintiff filed a supplemental submission on February 18, 2021. On February 23, 2021, the Court ordered the parties to submit further supplemental briefing regarding the measure of the amount in controversy. The Court entered an order remanding the action to the Superior Court of the State of California County of Contra Costa, on March 16, 2021. Vivid Seats LLC filed a petition for leave

to appeal the remand order to the United States Court of Appeals for the Ninth Circuit. The Superior Court meanwhile held a case management conference on May 25, 2021 and has set an additional case management conference for August 17, 2021. Vivid Seats LLC filed a notice of settlement of related action on April 15, 2021 informing the Court of the settlement agreement in Nellis.

Whether or not the petition is accepted and the remand order is affirmed, Vivid Seats LLC expects to vigorously defend against the action and to move to compel arbitration on a non-class basis if the case proceeds. Vivid Seats LLC is also prepared to argue that it is not a ticket seller under California Business and Profession Code Section 22507, and thus that Vivid Seats LLC has no obligations whatsoever under that statute. However, if the settlement agreement in Nellis as currently contemplated is finally approved, it would resolve the claims of individuals included in the proposed class in Elster who do not opt out of the Nellis settlement.

#### ***Brouillette v. Vivid Seats LLC***

Vivid Seats LLC is also defending a class action pending in the United States District Court for the Central District of California and captioned Bruce Brouillette v. Vivid Seats LLC, Case No. 8:20-cv-02133 (C.D. Cal.) (“Brouillette”). This case was filed on November 5, 2020 and generally alleges claims on behalf of the Named Plaintiff and California residents who used Vivid Seats LLC’s online marketplace to purchase tickets to an event that was subsequently cancelled or constructively cancelled within four years prior to the filing of the complaint until the date that notice of the putative class action is disseminated to the class, and who did not receive a full refund. Plaintiff asserts claims pursuant to the California Consumer Legal Remedies Act, California’s false-advertising law, California’s unfair-competition law, negligent misrepresentation and intentional misrepresentation. Plaintiff seeks injunctive relief, restitution, compensatory and punitive damages and attorneys’ fees and costs.

On January 25, 2021, Vivid Seats LLC filed a motion to dismiss and to compel arbitration on a non-class basis as well as to dismiss for failure to state a claim. On February 2, 2021, the Court granted the parties’ joint stipulation for a briefing schedule on the motion, setting Plaintiff’s opposition to the motion to be filed on March 22, 2021 and Vivid Seats LLC’s reply to be filed no later May 7, 2021. The Court has not otherwise entered a ruling on the pending motion.

On March 8, 2021 the Court stayed all discovery, discovery deadlines and other pre-trial deadlines pending its ruling on Vivid Seats LLC’s motion to compel arbitration and to dismiss.

On March 22, 2021, the Named Plaintiff filed an opposition to the motion to dismiss and to compel arbitration. Vivid Seats and the Named Plaintiff then engaged in settlement discussions and, on May 25, 2021, the parties executed an individual settlement agreement. On July 2, 2021, the Court dismissed the putative class allegations without prejudice and without notice and dismissed the Named Plaintiff’s individual claims with prejudice.

#### ***Shankula v. Ticketsonsale.com, LLC, et al.***

Ticket Fulfillment Services LP (“TFS”), a subsidiary of Vivid Seats LLC, is defending a putative class action in the Southern District of California and captioned Shankula v. Ticketsonsale.com, LLC, et al., Case No. 3:21- cv-00515 (S.D. Cal.). This case was filed on March 23, 2021 and asserts claims on behalf of all persons residing in California who used Ticketsonsale.com to purchase one or more tickets to any event that was subsequently cancelled, postponed indefinitely or rescheduled at any point within four years prior to the filing of the complaint and until the date of a judgment and who did not receive a full refund. Plaintiff asserts claims for breach of contract, unjust enrichment, conversion and violations of the California Consumer Legal Remedies Act and California’s unfair competition law. Plaintiff seeks injunctive relief, restitution, compensatory and punitive damages and attorneys’ fees and costs.

On June 4, 2021, the court granted the joint motion of TFS and Plaintiff to extend the deadline of TFS to answer or otherwise respond to the Complaint until August 6, 2021. The parties are in the process of exploring the possibility of a settlement and have scheduled a mediation session with the Honorable Wayne R. Andersen (Ret.) of JAMS. Whether or not settlement is successful, TFS intends to vigorously defend the action. If settlement is unsuccessful, TFS intends to move to compel arbitration on a non-class basis and to dismiss the complaint. TFS is not a ticket seller and also is not the marketplace through which the tickets at issue were sold, and TFS thus believes that Plaintiff lacks standing to sue. TFS is prepared to vigorously contest the case, which is still in its nascent stages.

## **Government Regulation**

Government regulation impacts key aspects of our business. These laws and regulations involve privacy, data protection, intellectual property, competition, consumer protection, ticketing, payments, export taxation or other subjects. For example, we are required to comply with federal, state and international laws regarding privacy and the storing, sharing, use, disclosure and protection of personally identifiable information and user data, an area that is increasingly subject to legislation and regulations in numerous jurisdictions, including the California Consumer Protection Act.

From time to time, federal, state, local and international authorities and/or consumers commence investigations, inquiries or litigation with respect to our compliance with applicable consumer protection, advertising, unfair business practice, antitrust (and similar or related laws) and other laws, particularly as related to ticket resale services. Some jurisdictions prohibit the resale of event tickets (anti-scalping laws) at prices above the face value of the tickets or at all, or highly regulate the resale of tickets, and new laws and regulations or changes to existing laws and regulations imposing these or other restrictions could limit or inhibit our ability to operate, or our users' ability to continue to use, our tickets business.

In addition, state ticketing laws vary from state to state, and it is unclear how such laws will be applied to our business as a result of the COVID-19 pandemic. As a result of the COVID-19 pandemic, we experienced a high volume of event reschedules, postponements, and cancellations and made certain changes to our refund practices. Such changes to our refund practices have drawn the attention of, and inquiry from, various attorneys general and other regulators.

We are subject to laws and regulations that affect companies conducting business on the Internet in many jurisdictions where we operate. With the continued state adoption of Internet sales tax laws and marketplace facilitator laws, more buyers across the United States will encounter sales tax for the first time on our platform in the future. Tax collection responsibility and the additional costs associated with complex sales and use tax collection, remittance and audit requirements could create additional burdens for buyers and sellers on our website and mobile app.

Many of the laws and regulations to which we are subject are still evolving and being tested in courts and could be interpreted in ways that could harm our business. In addition, the application and interpretation of these laws and regulations often are uncertain, particularly in the rapidly evolving industry in which we operate. Compliance with these laws, regulations, and similar requirements may be onerous and expensive, and variances and inconsistencies from jurisdiction to jurisdiction may further increase the cost of compliance and doing business.

## **Intellectual Property**

Our business relies substantially on the creation, use and protection of intellectual property related to our platform and services. We protect our intellectual property through a combination of intellectual property rights, including trademarks, domain names, copyrights and trade secrets, as well as through contractual relations with employees, customers, suppliers, affiliates and others. As of December 31, 2020, we have 31 trademarks.

## **Seasonality**

Our Marketplace GOV is impacted by seasonality with increased activity in the fourth quarter when all major sports leagues are in season and we experience an increase in order volume for theater and concert events during the holiday season.

## **Private Equity Owner**

We have a valuable relationship with our Private Equity Owner, which consists of certain investment funds affiliated with GTCR. Founded in 1980, GTCR is a leading growth-oriented private equity firm focused on investing in growth companies in the Healthcare, Financial Services & Technology, Technology, Media & Telecommunications and Growth Business Services industries. The Chicago-based firm pioneered The Leaders Strategy™—finding and partnering with management leaders in core domains to identify, acquire and build market-leading companies through transformational acquisitions and organic growth. Since its inception, our Private Equity Owner has invested more than \$20.0 billion in over 250 companies. Our Private Equity Owner purchased its controlling interest in Vivid Seats on June 30, 2017.

## **Company Information**

Vivid Seats PubCo was incorporated in Delaware on March 29, 2021 as a wholly owned subsidiary of Hoya Intermediate for the purpose of completing the business combination.

The headquarters for the Vivid Seats business is located at 111 N. Canal Street, Suite 800, Chicago, Illinois 60606. The Vivid Seats PubCo telephone number is (312) 291-9966 and its website is [www.vividseats.com](http://www.vividseats.com). The information on or available through any of such website is not deemed incorporated in this proxy statement/prospectus/consent solicitation statement and does not form part of this proxy statement/prospectus/consent solicitation statement.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF VIVID SEATS

*Unless the context otherwise requires, all references in this section to the "Company," "we," "us" or "our" refer to the business of Vivid Seats (collectively, "Vivid Seats") prior to the Closing.*

*You should read the following discussion and analysis of our financial condition and results of operations together with the "Selected Historical and Pro Forma Financial Information of Vivid Seats" section and our consolidated financial statements and related notes included elsewhere in this proxy statement/prospectus. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under the section titled "Risk Factors" or in other parts of this proxy statement/prospectus/consent solicitation statement. Our historical results are not necessarily indicative of the results that may be expected for any period in the future. Except as otherwise noted, all references to 2019 refer to the year ended December 31, 2019, all references to 2020 refer to the year ended December 31, 2020 and all references to 2021 refer to the year ended December 31, 2021.*

### Overview

Vivid Seats is a leading marketplace that allows fans of live events to connect seamlessly with third-party ticket sellers through our platform. We believe Vivid Seats is a leading marketplace based on a combination of (1) third party estimates of the overall market size, including a 2017 report prepared for us by a third party consulting firm, (2) publicly available information including our competitors' filings with the SEC and (3) internal company information from our Skybox platform that provides insights into volumes across marketplaces representing a meaningful portion of the over secondary ticketing market.

Our mission is focused on connecting buyers and sellers, empowering fans to *Experience It Live*. We believe live events deliver some of life's most exciting moments. Our platform provides ticket buyers and sellers with an easy-to-use, trusted marketplace experience, ensuring fans can attend live events and create memories that last a lifetime. During the years ended December 31, 2019 and 2020 we generated \$468.9 million and \$35.1 million of revenues, respectively, and \$2,279.8 million and \$347.3 million of Marketplace Gross Order Value ("Marketplace GOV"). During the three months ended March 31, 2020 and 2021 we generated \$69.7 million and \$24.1 million of revenues, respectively, and \$403.4 million and \$116.5 million of Marketplace GOV.

In addition to helping ticket buyers easily purchase tickets, our platform enables third-party ticket sellers to seamlessly manage their end-to-end operations. We unite millions of ticket buyers with thousands of ticket sellers.

Our platform is built on years of customer transactional and engagement data that provides us with deep insights into how to best connect buyers with the experiences they seek. In 2019, we connected over five million buyers to over 200,000 unique events.

### Our Business Model

We operate our business in two segments, Marketplace and Resale.

#### Marketplace

Through our Marketplace segment, we act as an intermediary between ticket buyers and third-party ticket sellers. We earn revenue processing ticket sales from our Owned Properties, consisting of the Vivid Seats website and mobile app, in addition to ticket sales initiated through distribution partners, our Private Label offering. Using our online platform, we process customer payments, coordinate ticket deliveries, and provide customer service to ticket buyers, allowing ticket sellers to focus more of their time on selling. We primarily earn revenue from service and delivery fees charged to ticket buyers. Using a third-party insurance provider, we also earn referral fee revenue by offering event ticket insurance to ticket buyers.

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In our role as an intermediary, we do not hold ticket inventory on Marketplace transactions. We do incur costs for developing and maintaining our platform, providing back-office and customer support to ticket sellers and ticket buyers, processing payments, and shipping tickets. We also incur substantial marketing costs, primarily related to online advertising, which we expect to increase over time as we grow and scale the business.

### *Resale*

Our Resale business primarily serves as an internal research and development group focused on creating best in class seller software and tools. Our Resale business includes a team of sellers, which acquires tickets for resale on secondary marketplaces, including our own platform, using Skybox. Skybox is our proprietary enterprise resource planning tool, which is a free-to-use system made available to assist third party sellers manage their ticket inventory, adjust pricing, and fulfill orders across several secondary marketplaces. When new features and functionality are released for Skybox, they are first tested and iterated by our Resale team prior to release to the seller community, and thus ensures we can continue innovating to meet the needs of our seller community.

### **Key Business Metrics and Non-GAAP Financial Measures**

We use the following metrics to evaluate our performance, identify trends, formulate financial projections, and make strategic decisions. We believe that these metrics provide useful information to investors and others in understanding and evaluating our results of operations in the same manner as our management team.

The following table summarizes our key business metrics and non-GAAP financial measure for the periods indicated (in thousands):

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
Marketplace GOV <sup>(1)</sup>	\$ 2,279,773	\$ 347,259	\$ 403,377	\$ 116,473
Total Marketplace orders <sup>(2)</sup>	7,185	1,066	1,252	293
Total Resale orders <sup>(3)</sup>	303	49	45	13
Adjusted EBITDA <sup>(4)</sup>	\$ 119,172	\$ (80,204)	\$ 1,179	\$ 4,187

- (1) Marketplace GOV represents the total transactional amount of Marketplace segment orders placed on our platform in a period, inclusive of fees, exclusive of taxes, and net of event cancellations that occurred during that period. Marketplace GOV was negatively impacted by event cancellations in the amount of \$22.2 million during the year ended December 31, 2019 and \$216.0 million during the year ended December 31, 2020. Marketplace GOV was negatively impacted by event cancellations in the amount of \$52.8 million during the three months ended March 31, 2020 and \$18.5 million during the three months ended March 31, 2021.
- (2) Total Marketplace orders represents the volume of Marketplace segment orders placed on our platform during a period, net of event cancellations that occurred during that period. During the year ended December 31, 2019, our Marketplace segment experienced 54,961 event cancellations, compared to 549,085 event cancellations during the year ended December 31, 2020. During the three months ended March 31, 2020, our Marketplace segment experienced 141,027 event cancellations, compared to 51,775 event cancellations during the three months ended March 31, 2021.
- (3) Total Resale orders represents the volume of Resale segment orders sold by our Resale team in a period, net of event cancellations that occurred during that period. During the year ended December 31, 2019, our Resale segment experienced 1,517 event cancellations, compared to 20,644 event cancellations during the year ended December 31, 2020. During the three months ended March 31, 2020, our Resale segment experienced 9,978 event cancellations, compared to 1,141 event cancellations during the three months ended March 31, 2021.
- (4) Adjusted EBITDA is not a measure defined under GAAP. We believe Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our results of operations, as well as provides a useful measure for period-to-period comparisons of our business performance. For further information about how we calculate adjusted EBITDA, see “Selected Historical and Pro Forma Financial Information of Vivid Seats.”

### ***Marketplace GOV***

Marketplace GOV is a key driver of our Marketplace segment's revenue. Marketplace GOV represents the total transactional amount of Marketplace orders in a period, inclusive of fees, exclusive of taxes, and net of event cancellations that occurred during that period. Marketplace GOV reflects our ability to attract and retain customers, as well as the overall health of the industry.

Our Marketplace GOV is impacted by seasonality with increased activity in the fourth quarter when all major sports leagues are in season and we experience increases in order volume for theater and concert events during the holiday season. In addition to seasonality, quarterly fluctuations in our Marketplace GOV result from the number of cancellations, the overall popularity and resultant demand of performers, tours, teams, and events, as well as length and team composition of sports playoff series and championship games.

### ***Total Marketplace Orders***

Total Marketplace orders represents the volume of Marketplace segment orders placed on our platform in a period, net of event cancellations. An order can include one or more tickets or parking passes. Total Marketplace orders allow us to monitor order volume and better identify trends within our Marketplace segment.

### ***Total Resale Orders***

Total Resale orders represents the volume of Resale segment orders sold by our Resale team in a period, net of event cancellations. An order can include one or more tickets or parking passes. Total Resale orders allow us to monitor order volume and better identify trends within our Resale segment.

### ***Adjusted EBITDA***

We present Adjusted EBITDA, which is a non-GAAP measure, because it is a measure frequently used by analysts, investors, and other interested parties to evaluate companies in our industry. Further, we believe this measure is helpful in highlighting trends in our operating results, because they exclude the impact of items that are outside the control of management or not reflective of ongoing performance related directly to the operation of our online marketplace and resale business.

Adjusted EBITDA is a key measurement used by our management internally to make operating decisions, including those related to analyzing operating expenses, evaluating performance, and performing strategic planning and annual budgeting. Moreover, we believe Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our results of operations, as well as provides a useful measure for period-to-period comparisons of our business performance and highlighting trends in our operating results. See "Selected Historical and Pro Forma Financial Information of Vivid Seats" for information regarding our use of Adjusted EBITDA and a reconciliation of Adjusted EBITDA to net income.

### ***Recent Developments***

#### ***The Business Combination***

On April 21, 2021, Vivid Seats entered into a definitive merger agreement with Horizon Acquisition Corporation ("Horizon"), a special purpose acquisition company. The merger transaction will be accounted for as a reverse recapitalization, with Vivid Seats treated as the accounting acquirer. Accordingly, the financial statements of the combined company will represent a continuation of the financial statements of Vivid Seats. In connection with the agreement, Vivid Seats will gain access to funds held in Horizon's trust account, the amount of which would vary based on the number of redemptions exercised by Horizon shareholders, with reductions expected to be offset by the Sponsor Backstop Commitment.

In connection with the agreement, Vivid Seats also entered into a private investment in public equity financing ("PIPE Subscription"). As part of the PIPE Subscription, Vivid Seats expects to raise an additional \$225.0 million. Eldridge Industries, LLC has committed to make an additional PIPE investment at \$10 per share, in an amount equal to Horizon's shareholder redemptions, if any.



Proceeds from the merger with Horizon and the PIPE Subscription will be used for debt repayment and capital structure optimization, as well as positioning Vivid Seats to continue investing in growth and improving the customer experience.

See “Summary Term Sheet” for further information regarding terms of the merger agreement.

### ***COVID-19 Has Had a Disproportionately Negative Effect on the Live Entertainment Industry***

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. Almost immediately, mitigation measures implemented or recommended by governmental authorities and private organizations restricted attendance at live events throughout North America. Through the first quarter of 2021, we have seen a gradual recovery as mitigation measures slowly ease. Ticket orders, however, remain significantly below pre-pandemic levels.

Reduced ticket sales resulting from the pandemic had a significant adverse impact on the Company’s business and operating results during 2020 and the first quarter of 2021. The unprecedented restrictions on live events in 2020 and 2021 resulted in large-scale event cancellations and meaningfully reduced activity on our platform. The resulting decline in revenue and broader economic impact of the pandemic led us to determine that an impairment triggering event existed during the second quarter of 2020, resulting in an impairment charge of \$573.8 million to goodwill, indefinite-lived intangible assets, definite-lived intangible assets, and other long-lived assets. These factors contributed to a net loss of \$774.2 million in 2020.

In response to the pandemic and the decreased demand for live entertainment, we took several key actions, including:

- Raising an additional \$260 million in debt in May 2020 to ensure we were able to meet our liquidity needs and to provide greater financial flexibility;
- Reducing discretionary and variable spending, including reductions to marketing expenses, payment processing fees, and shipping costs, reducing overall expenses by 67% in 2020 as compared to 2019;
- Reducing full time employee headcount by approximately 50% through furloughs and terminations while maintaining key expertise across core functional areas;
- Reducing consulting and professional service fees by \$7.6 million during 2020; and
- Reducing office expenses as we shifted to a remote work environment in March 2020.

While some of these cost reductions will be permanent, certain costs will increase as order volume recovers. A large portion of our employee headcount reductions were in our operations function. We will need to increase employee staffing in our operations function as order volume increases.

The COVID-19 pandemic is evolving and the ultimate pace of recovery is uncertain. The recovery of live entertainment to pre-pandemic levels is dependent on future developments, such as restrictions limiting attendance at live events, rates of vaccination against COVID-19, and consumer willingness to attend live events. We expect the pandemic to have a materially adverse impact on our business in future periods. However, we believe we are well positioned for the return of large scale, full capacity events. Throughout the pandemic, we focused on taking care of our customers while working with our seller community, improving the efficiency of our operations, enhancing the customer journey and experience, and optimizing our marketing programs.

### **Key Factors Affecting Our Performance**

#### ***Buyer Sourcing and Retention and Sales Volume***

Attracting new buyers to our platform, retaining existing buyers and incentivizing increased purchase frequency drives Marketplace GOV and revenue growth. We attract most new customers to our platform through our

marketing efforts, including traffic generation from search engines and affiliate partner websites. We seek to retain our customers by providing an optimal user experience, at a competitive price point, by combining the ability to discover events with personalized recommendations with an efficient checkout process. We seek to create ongoing relationships with our customers by offering a compelling loyalty program, Vivid Seats Rewards, in which customers generate value and savings on future purchases each time they complete a purchase made on a Vivid Seats website or mobile app. The degree to which these efforts are successful has an impact on our sales volume which drives our revenues and Marketplace GOV.

### ***Seller Retention***

Attracting and retaining sellers is crucial to driving Marketplace GOV and revenue growth. The continued success and growth of our platform is dependent upon maintaining sufficient quantity and diversity of ticket offerings which, in turn, is dependent on sellers' decision to utilize our platform. Skybox enables sellers to list their inventory on all major marketplaces through direct application programming interface ("API") integrations; provides simplified order fulfillment with barcode and PDF integrations; offers automated listing creation and ticket attachment; and provides a reporting suite to manage inventory, purchases, and profitability. Our in-house Resale team uses Skybox and provides feedback and insight to continually enhance the offering. We have a dedicated relationship management team supporting and working alongside our seller community. We also offer a fulfillment service to our sellers so they can remain focused on selling tickets. We will continue to invest in Skybox and provide innovative seller technology and services. The degree to which these efforts are successful has an impact on our revenues and Marketplace GOV.

### ***Enhance our Technology Platform and Product Offering***

We aim to provide an efficient and seamless experience for both ticket buyers and sellers on our platform. Vivid Seats has a born-in the-cloud technology platform and our focus on superior technology and actionable data insights has supported scalable, profitable growth. We will continue to invest in our platform to provide easy discovery, search and purchase functionality for ticket buyers. We will also continue to invest in our platform to provide our sellers the ability to manage, sell and deliver inventory in an efficient and informed manner.

We will continue to improve and expand our product offerings, including our Vivid Seats Rewards program and content channels that drive engagement with our customers. We are steadfast in working to optimize the journey and experience of buyers on our platform. We are investing to improve customer acquisition by enabling non-transactional engagement channels, including access to live stream performances, blog content, industry news and gamification on our website and mobile app. We believe these engagement channels will help drive brand awareness and affinity and increase loyalty outside of the traditional transactional purchase process.

### ***Availability of Live Events and Seasonality***

Our ability to sell tickets, generate revenue, and achieve growth is dependent on the scheduling of live events and the amount of event cancellations in a given period. Buyers and fans must be willing and able to attend live events. If live events are cancelled, reduced, or restricted, like during the recent global COVID-19 pandemic, our ability to generate revenue and cash will be hindered. If the cessation and large-scale cancellations of events happens again in the future, it may affect our operational and financial outlook. We are optimistic that the demand for live events will return and we believe we are well positioned to benefit from the market rebound and the return of large scale and full capacity events due to our swift operational decisions and financial mitigation measures taken since March 2020.

Due to the seasonal nature of events and the timing of when tickets become available for sale, revenue, cash, and working capital can be impacted by fluctuations in the availability of events for sale to the public. Our Marketplace GOV, Marketplace orders, and revenue are typically the greatest during the fourth quarter. At this time, order volume processed on our platform is the greatest, with all major sports leagues in play and increased holiday demand for concert and theater events.

### ***Success of Marketing Investments***

We have historically attracted new customers to our marketplace primarily through performance-based channels, such as paid search engine marketing using our proprietary paid search algorithms that create a unique engine for efficiently bidding on keywords, and affiliated partner websites. While those will continue to be important channels for customer acquisition, we intend to improve our brand presence and awareness to increase traffic generation and orders through direct or unpaid channels. We believe investments in marketing and loyalty will drive sustainable growth in Marketplace GOV and marketplace orders. While we undertake this important initiative, we may have higher marketing and selling expenses and lower revenue due to higher loyalty program costs, with a longer-term time horizon for reaping the benefits. Future growth will depend on the success of our business.

### **Components of Results of Operations**

#### ***Revenues***

We earn revenues through both our Marketplace and Resale segments.

*Marketplace:* Our Marketplace segment primarily generates revenue by serving as an intermediary between ticket sellers and ticket buyers in our secondary marketplace. Revenue primarily consists of service and delivery fees, as well as referral fees earned on the purchase of ticket insurance by ticket buyers from third-party insurers.

We recognize Marketplace revenue when the ticket seller confirms an order with the ticket buyer. We recognize revenue net of cancellation charges, including estimated customer refunds (less recoveries) and chargebacks, and loyalty program costs. The reduction to revenue includes actual cancellation charges, as well as the change to forecasted future cancellation charges.

*Resale:* Our Resale segment primarily earns revenue as a third-party seller of tickets that we own. We recognize Resale revenue based on the value of the ticket order, net of cancellation charges.

#### ***Cost of Revenues (exclusive of Depreciation and Amortization)***

We incur cost of revenue in both our Marketplace and Resale segments.

*Marketplace:* Cost of revenues in our Marketplace segment primarily consists of payment processing fees and shipping fees.

*Resale:* Cost of revenues in our Resale segment primarily consists of the cost of tickets that were delivered and an allowance to adjust ticket inventory to lower of cost or net realizable value and to address excess and obsolescence risks.

#### ***Marketing and Selling***

Marketing and selling expenses, which are incurred entirely by our Marketplace segment, primarily consist of online advertising costs aimed towards acquiring new customers, which include fees paid to our advertising affiliates and distributors, paid search engine marketing, and other online marketing activities. Our offline marketing costs include spending on traditional media channels; public relations and advertising agency costs; and partnership expenses with teams, leagues, and theaters.

#### ***General and Administrative***

General and administrative expenses primarily consist of personnel-related expenses and other types of general and administrative costs. Personnel costs, which are entirely included within general and administrative expenses

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and constitute the largest percentage of general and administrative expenses, include salaries, employee benefits, equity-based compensation, contractor and outsourced workforce expenses, and other personnel-related costs. General and administrative expenses also include all expenses for information technology excluding amortization of capitalized internal-use software development costs. Information technology costs classified within general and administrative expenses include expenses for cloud hosting services, software licenses, and software development activities not capitalized. Other general and administrative expenses also include costs related to consulting and professional services, as well as sales tax contingencies and other corporate costs. Although selling, general and administrative expenses will increase as we scale the business, we expect these expenses to decrease as a percentage of revenue as we grow due to economies of scale.

### ***Depreciation and Amortization***

Depreciation and amortization expenses consist of depreciation associated with our property and equipment and amortization related to our personal seat licenses and definite-lived intangible assets, including capitalized software development costs.

### ***Impairment Charges***

Impairment charges consist of losses incurred from the impairment of our goodwill, indefinite-lived intangible assets, definite-lived intangible assets, and other long-lived assets.

### ***Interest Expense – Net***

Interest expense primarily consists of interest expense associated with our outstanding Term Loan Facilities (defined below – see “Liquidity and Capital Resources”).

### ***Loss on Extinguishment of Debt***

Loss on extinguishment of debt is incurred as a result of the retirement of our debt obligations and includes the write-off of the original issuance discount and issuance costs, inclusive of any prepayment penalties.

## **Results of Operations**

The following table sets forth our results of operations for each of the periods presented (in thousands):

	<b>Years Ended December 31,</b>		<b>Three Months Ended March 31,</b>	
	<b>2019</b>	<b>2020</b>	<b>2020</b>	<b>2021</b>
Revenues	\$468,925	\$ 35,077	\$ 69,661	\$ 24,114
<b>Costs and expenses:</b>				
Cost of revenues (exclusive of depreciation and amortization shown separately below)	103,334	22,937	19,868	3,496
Marketing and selling	178,446	38,121	31,947	7,955
General and administrative	104,004	67,952	23,159	16,300
Depreciation and amortization	93,078	48,247	23,897	295
Impairment charges	—	573,838	—	—
<b>Loss from operations</b>	<b>\$ (9,937)</b>	<b>\$(716,018)</b>	<b>\$(29,210)</b>	<b>\$ (3,932)</b>
Other expenses				
Interest expense – net	41,497	57,482	9,293	16,319
Loss on extinguishment of debt	2,414	685	—	—
<b>Net loss</b>	<b>\$ (53,848)</b>	<b>\$(774,185)</b>	<b>\$(38,503)</b>	<b>\$ (20,251)</b>

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The following table sets forth the components of our results of operations for each of the periods presented as a percentage of revenues:

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
Revenues	100%	100%	100%	100%
<b>Costs and expenses:</b>				
Cost of revenues (exclusive of depreciation and amortization shown separately below)	22	65	29	14
Marketing and selling	38	109	46	33
General and administrative	22	194	33	68
Depreciation and amortization	20	138	34	1
Impairment charges	—	1,635	—	—
<b>Loss from operations</b>	<b>(2)</b>	<b>(2,041)</b>	<b>(42)</b>	<b>(16)</b>
Other expenses				
Interest expense – net	9	164	13	68
Loss on extinguishment of debt	—	2	—	—
<b>Net loss</b>	<b><u>(11)%</u></b>	<b><u>(2,207)%</u></b>	<b><u>(55)%</u></b>	<b><u>(84)%</u></b>

### Comparison of the Three Months Ended March 31, 2020 and 2021

#### Revenues

The following table presents revenues by segment (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Revenues:</b>				
Marketplace	\$58,006	\$21,993	\$(36,013)	(62)%
Resale	11,655	2,121	(9,534)	(82)
<b>Total revenues</b>	<b><u>\$69,661</u></b>	<b><u>\$24,114</u></b>	<b><u>\$(45,547)</u></b>	<b><u>(65)%</u></b>

Total revenues decreased \$45.5 million, or 65%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease, which occurred in both our Marketplace and Resale segments, resulted from the effects of the COVID-19 pandemic and continued restrictions over attendance at live events. During the first quarter of 2020, the pandemic significantly affected March, while January and February were largely unaffected. The pandemic had a significant impact over the entire first quarter of 2021.

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### *Marketplace*

The following table presents revenues in our Marketplace segment by event category (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Revenues:</b>				
Concerts	\$34,347	\$ 7,014	\$(27,333)	(80)%
Sports	17,734	14,138	(3,596)	(20)
Theater	5,732	783	(4,949)	(86)
Other	193	58	(135)	(70)
<b>Total marketplace revenues</b>	<b>\$58,006</b>	<b>\$21,993</b>	<b>\$(36,013)</b>	<b>(62)%</b>

Marketplace revenue decreased by \$36.0 million, or 62%, during the three months ended March 31, 2021 compared to the three months ended March 31, 2020.

Total orders processed on our Marketplace platform decreased 77%, from 1.3 million during the three months ended March 31, 2020 to 0.3 million during the three months ended March 31, 2021. The decrease in orders processed is commensurate with the decrease in scheduled events and limitations over fan attendance resulting from the COVID-19 pandemic. These decreases are largely consistent across all event categories, except for the sports category. The decrease in the sports category was less pronounced, due to the loosening of restrictions over fan attendance at live sporting events during the first quarter of 2021.

Cancellation charges, which are recognized as a reduction to revenues, were \$21.9 million for the three months ended March 31, 2020, compared to \$1.4 million for the three months ended March 31, 2021. Cancellation charges were significantly higher for the three months ended March 31, 2020 because of mass cancellations at the onset of the COVID-19 pandemic.

Marketplace revenue by business model consisted of the following during the three months ended March 31, 2020 and 2021 (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Revenues:</b>				
Owned Properties	\$43,078	\$18,196	\$(24,882)	(58)%
Private Label	14,928	3,797	(11,131)	(75)
<b>Total marketplace revenues</b>	<b>\$58,006</b>	<b>\$21,993</b>	<b>\$(36,013)</b>	<b>(62)%</b>

The decreases in revenue from both Owned Properties and Private Label resulted primarily from the ongoing effects of the COVID-19 pandemic. The event category mix of our Owned Properties is more reliant on sports, which resulted in a lower percentage decrease in revenues when compared to Private Label during the three months ended March 31, 2021.

### *Resale*

Revenue for our Resale segment decreased \$9.5 million, or 82%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease resulted primarily from lower ticket sales volume. Cancellation charges classified as a reduction of revenue negatively impacted Resale revenue by

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\$2.2 million and \$1.1 million for the three months ended March 31, 2020 and 2021, respectively. Although the effects of the COVID-19 pandemic are ongoing, cancellation charges decreased as there was an increased certainty around the occurrence of live events in the first quarter of 2021.

### ***Cost of Revenues (exclusive of Depreciation and Amortization)***

The following table presents cost of revenues by segment (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Cost of revenues:</b>				
Marketplace	\$ 9,978	\$2,358	\$ (7,620)	(76)%
Resale	9,890	1,138	(8,752)	(88)
<b>Total cost of revenues</b>	<b>\$19,868</b>	<b>\$3,496</b>	<b>\$(16,372)</b>	<b>(82)%</b>

Total cost of revenues decreased \$16.4 million, or 82%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease resulted from the decline in sales volume in both our Marketplace and Resale segments.

#### *Marketplace*

Marketplace cost of revenues decreased by \$7.6 million, or 76%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease in cost of revenues is consistent with the decrease in total marketplace orders processed, which decreased 77% from 1.3 million for the three months ended March 31, 2020 to 0.3 million for the three months ended March 31, 2021. Cost of revenues as a percentage of revenues in our Marketplace segment decreased from 17% during the three months ended March 31, 2020 to 11% during the three months ended March 31, 2021. Cost of revenues constituted a greater percentage of our revenues in 2020 due to the impact of increased cancellation charges, which are recognized as a reduction of revenue.

#### *Resale*

Resale cost of revenues decreased \$8.8 million, or 88%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease, which resulted from lower overall ticket sales volume, is consistent with the overall decrease in Resale revenue. Cancellation charges resulted in a reduction to Resale cost of revenues of \$1.2 million and \$0.8 million for the three months ended March 31, 2020 and 2021, respectively.

### ***Marketing and Selling***

The following table presents marketing and selling expenses (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Marketing and selling:</b>				
Online	\$28,759	\$7,789	\$(20,970)	(73)%
Offline	3,188	166	(3,022)	(95)
<b>Total marketing and selling</b>	<b>\$31,947</b>	<b>\$7,955</b>	<b>\$(23,992)</b>	<b>(75)%</b>

Marketing and selling expenses, which are entirely attributable to our Marketplace segment, decreased \$24.0 million, or 75%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease in spend primarily resulted from a reduction in online marketing and selling expenses.

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Online marketing and selling expenses decreased \$21.0 million, or 73%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. Due to restrictions over the attendance of live events, we significantly reduced our spending on paid search engine marketing during the COVID-19 pandemic.

### **General and Administrative**

The following table presents general and administrative expenses (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>General and administrative</b>				
Personnel expenses	\$12,603	\$ 6,671	\$(5,932)	(47)%
Sales tax expense	5,130	2,362	(2,768)	(54)
Other	5,426	7,267	1,841	34
<b>Total general and administrative</b>	<b>\$23,159</b>	<b>\$16,300</b>	<b>\$(6,859)</b>	<b>(30)%</b>

General and administrative expenses decreased \$6.9 million, or 30%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease primarily resulted from reduced personnel expenses, which decreased by \$5.9 million. Following the onset of the pandemic in March 2020, we significantly reduced our employee headcount, resulting in lower personnel expenses. These headcount reductions were most pronounced in our operations function. As ticket volumes increase, we expect the number of employees in our operations function to also increase.

As a result of lower order volumes during the three months ended March 2021, sales tax expenses decreased by \$2.8 million.

Other general and administrative expenses increased by \$1.8 million, primarily due to a \$3.6 million increase in consulting and professional service fees related to the planned merger transaction with Horizon, in addition to a \$0.5 million increase in charitable spending. Those increases were partially offset by a \$2.3 million decrease in other corporate spending, including travel and entertainment.

### **Depreciation and Amortization**

The following table presents depreciation and amortization expenses (in thousands, except percentages):

	Three Months Ended March 31,		Change	% Change
	2020	2021		
Depreciation and amortization	\$ 23,897	\$ 295	\$(23,602)	(99)%

Depreciation and amortization expenses decreased \$23.6 million during the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The decrease primarily resulted from the impairment of our definite-lived intangible assets and other long-lived assets and equipment in the second quarter of 2020.

### **Other Expenses**

	Three Months Ended March 31,		Change	% Change
	2020	2021		
<b>Other expenses</b>				
Interest expense – net	\$9,293	\$ 16,319	\$7,026	76%
<b>Total other expenses</b>	<b>\$9,293</b>	<b>\$ 16,319</b>	<b>\$7,026</b>	<b>76%</b>



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Other expenses consisted of interest expense during the three months ended March 31, 2020 and 2021. Interest expense increased by \$7.0 million, or 76%, for the three months ended March 31, 2021 compared to the three months ended March 31, 2020. Interest expense increased as a result of the Company's May 2020 First Lien Loan, which resulted in an \$8.0 million incremental interest expense, which was capitalized into the principal, during the first three months of 2021 compared to the three months ended March 31, 2020.

### Comparison of the Years Ended December 31, 2019 and 2020

#### Revenues

The following table presents revenues by segment (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Revenues:</b>				
Marketplace	\$403,645	\$23,281	\$(380,364)	(94)%
Resale	65,280	11,796	(53,484)	(82)
<b>Total revenues</b>	<b>\$468,925</b>	<b>\$35,077</b>	<b>\$(433,848)</b>	<b>(93)%</b>

Total revenues decreased \$433.8 million, or 93%, in 2020 compared to 2019. The decrease, which occurred in both our Marketplace and Resale segments, resulted from the unprecedented nature of the global COVID-19 pandemic and the mass suspension and cancellation of live events from March 2020 onward.

#### Marketplace

The following table presents revenues in our Marketplace segment by event category (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Revenues:</b>				
Concerts	\$187,753	\$15,775	\$(171,978)	(92)%
Sports	169,577	3,484	(166,093)	(98)
Theater	44,754	3,759	(40,995)	(92)
Other	1,561	263	(1,298)	(83)
<b>Total marketplace revenues</b>	<b>\$403,645</b>	<b>\$23,281</b>	<b>\$(380,364)</b>	<b>(94)%</b>

Marketplace revenue decreased by \$380.4 million, or 94%, in 2020 compared to 2019.

During 2020, governmental restrictions and social mitigation efforts aimed at slowing the spread of COVID-19 resulted in a large-scale suspension of live entertainment events from March through the end of the year. Each of the professional sports leagues either suspended or greatly reduced fan attendance for most of the year. Similarly, live music concerts, theater, and other live entertainment were greatly reduced during 2020.

Consequently, the number of ticketed events and orders processed on our platform decreased significantly. Total marketplace orders processed on our platform decreased 85% from 7.2 million in 2019 to 1.1 million in 2020. The decrease in orders processed is commensurate with the decrease in scheduled events resulting from the pandemic. These decreases are largely consistent across all our event categories.

In addition to reduced order volume on our platform, the COVID-19 pandemic caused significantly more cancellation charges in 2020 compared to 2019. Cancellation charges, which are recognized as a reduction to

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revenues, were \$76.7 million in 2020, compared to \$15.6 million in 2019. During 2020, event cancellation rates for sports and theater events were approximately double the cancellation rate for concerts, which were more likely to be postponed rather than cancelled.

Marketplace revenue by business model consisted of the following during 2019 and 2020 (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Revenues:</b>				
Owened Properties	\$329,262	\$24,188	\$(305,074)	(93)%
Private Label	74,383	(907)	(75,290)	(101)
<b>Total marketplace revenues</b>	<b>\$403,645</b>	<b>\$23,281</b>	<b>\$(380,364)</b>	<b>(94)%</b>

The decreases in revenue from both Owened Properties and Private Label resulted primarily from the impact of the COVID-19 pandemic and the mass suspension and cancellation of live events. The percentage revenue decrease for Owened Properties was less than Private Label in 2020 due to the disproportionate impact of cancellation charges.

### *Resale*

Revenue at our Resale segment decreased \$53.5 million, or 82%, in 2020 compared to 2019. The decrease resulted primarily from lower ticket sales volume and increases in event cancellations and refunds. Cancellation charges classified as a reduction of revenue amounted to \$0.4 million and \$6.7 million in 2019 and 2020, respectively. Both the decline in sales volume and increase in cancellation charges resulted from the effects of the COVID-19 pandemic.

### *Cost of Revenues (exclusive of Depreciation and Amortization)*

The following table presents cost of revenues by segment (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Cost of revenues:</b>				
Marketplace	\$ 50,533	\$12,273	\$(38,260)	(76)%
Resale	52,801	10,664	(42,137)	(80)
<b>Total cost of revenues</b>	<b>\$103,334</b>	<b>\$22,937</b>	<b>\$(80,397)</b>	<b>(78)%</b>

Total cost of revenues decreased \$80.4 million, or 78%, in 2020 compared to 2019. The decrease resulted from the decline in sales volume in both our Marketplace and Resale segments.

### *Marketplace*

Marketplace cost of revenues decreased by \$38.3 million, or 76%, in 2020 compared to 2019. The decrease in cost of revenues is consistent with the decrease in total marketplace orders processed, which decreased by 85% from 7.2 million orders in 2019 to 1.1 million orders in 2020. Cost of revenues as a percentage of revenues in our Marketplace segment increased from 13% in 2019 to 53% in 2020. Cost of revenues constituted a greater percentage of our revenues in 2020 due to the impact of increased cancellation charges, which are recognized as a reduction to revenues.

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### *Resale*

Resale cost of revenues decreased \$42.1 million, or 80%, in 2020 compared to 2019. The decrease, which resulted from lower overall ticket sales volume, is consistent with the overall decrease in Resale revenue. Cost of revenues as a percentage of revenues in our Resale segment increased from 81% in 2019 to 90% in 2020. Cost of revenues represented a greater proportionate share of revenues during 2020, due to the impact of the increased effect of cancellation charges in 2020. Cancellation charges resulted in a reduction to Resale cost of revenues of zero and \$4.3 million in 2019 and 2020, respectively. The increase in cancellation charges is due to the effects of the COVID-19 pandemic.

### *Marketing and Selling*

The following table presents marketing and selling expenses (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Marketing and selling:</b>				
Online costs	\$166,315	\$34,213	\$(132,102)	(79)%
Offline costs	12,131	3,908	(8,223)	(68)
<b>Total marketing and selling</b>	<b>\$178,446</b>	<b>\$38,121</b>	<b>\$(140,325)</b>	<b>(79)%</b>

We reduced our marketing and selling expenditures significantly in 2020, due to event cancellations caused by the pandemic. Marketing and selling expenses, which are entirely attributable to our Marketplace segment, decreased \$140.3 million, or 79%, in 2020 compared to 2019. The overall decrease in spend during 2020 primarily resulted from a reduction in online marketing and selling expenses.

Online marketing and selling expenses decreased \$132.1 million, or 79%, in 2020 compared to 2019 primarily due to lower spending on paid search engine marketing. Offline marketing and selling expenses decreased \$8.2 million, or 68%, due to less spending on partnership marketing expenses and less advertising on television and radio. As the COVID-19 pandemic unfolded during the year, we were able to renegotiate or reduce our commitments to certain partnership agreements, particularly given restrictions limiting attendance at live entertainment events.

### *General and Administrative*

The following table presents general and administrative expenses (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>General and administrative:</b>				
Personnel expenses	\$ 60,659	\$37,696	\$(22,963)	(38)%
Sales tax expense	10,819	7,060	(3,759)	(35)
Other	32,526	23,196	(9,330)	(29)
<b>Total general and administrative</b>	<b>\$104,004</b>	<b>\$67,952</b>	<b>\$(36,052)</b>	<b>(35)%</b>

General and administrative expenses decreased \$36.1 million, or 35%, in 2020 compared to 2019. The decrease primarily resulted from reduced personnel expenses, which decreased by \$23.0 million during 2020 when compared to 2019. Due to the effects of the pandemic, we reduced our employee headcount from 523 employees as of December 31, 2019 to 264 employees as of December 31, 2020. These reductions were primarily in our operations function. As ticket volumes increase, we expect the number of employees in this function to also increase.

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The amount of sales tax expenses incurred by us also decreased during 2020, primarily due to the effects of the pandemic. Sales tax expenses did not decrease proportionately with revenue during 2020, because the Company now expects to incur sales tax obligations in more jurisdictions than in 2019.

Other general and administrative expenses decreased by \$9.3 million, primarily due to a \$7.6 million reduction in consulting and professional service fees, in addition to a \$7.6 million reduction in other corporate spending, including travel and entertainment. Those decreases were partially offset by a \$6.1 million increase in charitable spending.

### **Depreciation and Amortization**

The following table presents depreciation and amortization expenses (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
Depreciation and amortization	\$93,078	\$48,247	\$ (44,831)	(48)%

Depreciation and amortization expenses decreased \$44.8 million, or 48%, in 2020 as compared to 2019. The decrease primarily resulted from the impairment of our definite-lived intangible assets and property and equipment in the second quarter of 2020.

### **Impairment Charges**

During 2020, we incurred impairment charges of \$573.8 million. These impairment charges were triggered by the effects of the COVID-19 pandemic. Due to the effects of the pandemic, we experienced a substantial reduction of revenue during the first half of 2020, which continued through the remainder of the year. We anticipate that the COVID-19 pandemic and mitigation policies enacted by governmental entities will continue to have a material impact on our cash flows in the future.

The impairments, which occurred in the second quarter of 2020, resulted in reductions to the value of our goodwill and indefinite-lived trademark of \$377.1 million and \$78.7 million, respectively. The impairment also resulted in a complete write-off of our definite-lived intangibles, which included internally developed technology, supplier relationships, customer relationships, and non-compete agreements, in addition to our property and equipment and personal seat licenses.

### **Other Expenses**

The following table presents other expenses (in thousands, except percentages):

	Years Ended December 31,		Change	% Change
	2019	2020		
<b>Other expenses</b>				
Interest expense – net	\$41,497	\$57,482	\$15,985	39%
Loss on extinguishment of debt	2,414	685	(1,729)	(72)
<b>Total other expenses</b>	<b>\$43,911</b>	<b>\$58,167</b>	<b>\$14,256</b>	<b>32%</b>

#### *Interest expense – net*

Interest expense – net increased \$16.0 million, or 39%, in 2020 compared to 2019. The increase was primarily a result of \$15.7 million in additional interest which was capitalized into the principal of our \$260 million first lien loan issued in May 2020, partially offset by lower cash interest primarily due to a \$40 million payoff of our June 2017 Second Lien Loan in 2019.

### *Loss on extinguishment of debt*

Loss on extinguishment of debt decreased \$1.7 million, or 72%, in 2020 compared to 2019. The loss incurred in 2020 resulted from the retirement of our revolving credit facility in May 2020. The \$2.4 million loss on extinguishment of debt incurred during 2019 resulted from a \$40 million payoff of our June 2017 Second Lien Loan in 2019.

### **Liquidity and Capital Resources**

We have historically financed our operations primarily through cash generated from our operating activities. Our primary short-term requirements for liquidity and capital are to fund general working capital, capital expenditures, and debt service requirements. Our primary long-term liquidity needs are related to acquisitions and the repayment of our loans.

Our primary sources of funds are cash generated from operations and proceeds from borrowings, including our term loans and revolving credit facility. In response to the pandemic, we borrowed \$50.0 million under our revolving credit facility in March 2020 and subsequently entered into the May 2020 First Lien Loan (defined below). We received \$251.5 million in net cash proceeds from the May 2020 First Lien Loan, which we used to repay the \$50.0 million in outstanding borrowings under the revolving credit facility in May 2020 and to fund our operations. As noted in the “Liquidity and Capital Resources—Loan Agreements” section below, we expect to repay the May 2020 First Lien Loan in connection with, and using the proceeds from, the merger transaction with Horizon and the PIPE Subscription. We believe our existing cash and cash equivalents are sufficient to fund our liquidity needs for the next 12 months.

As of March 31, 2021, we had \$312.8 million of cash and cash equivalents. Cash and cash equivalents consist of interest-bearing deposit accounts, money market accounts managed by third-party financial institutions, and highly liquid investments with maturities of three months or less. At this time, we do not anticipate a need to raise additional capital upon consummation of the Transactions based on the amount of capital raised in the business combination and PIPE Subscription, in addition to cash generated from our operating activities. Through March 31, 2021, we have generated positive cash flows from our operating activities.

### **Loan Agreements**

As of March 31, 2021, we are party to two separate credit facilities (collectively, the “Term Loan Facilities”), as further described in the “Description of Certain Indebtedness” section below.

In response to the pandemic, we borrowed \$50.0 million under the Revolving Facility (as defined in the “Description of Certain Indebtedness” section below) in March 2020. We then entered into the May 2020 First Lien Loan, which resulted in \$251.5 million in net cash proceeds. We used the net cash proceeds from the May 2020 First Lien Loan to immediately repay the \$50.0 million in outstanding borrowings under the Revolving Facility and to fund operations of the Company. The Revolving Facility was terminated in full simultaneously with the repayment in May 2020.

The May 2020 First Lien Loan, which is pari passu with the June 2017 First Lien Loan, carries a variable interest rate of LIBOR plus an applicable margin of 9.50%, or a base rate plus an applicable margin of 8.50%. The May 2020 First Lien Loan matures in May 2026, subject to an earlier springing maturity date of June 30, 2024 if the June 2017 First Lien Loan, or a refinancing thereof with scheduled payments of principal prior to June 30, 2024, remains outstanding as of that date. The effective interest rate on the May 2020 First Lien Loan, which fluctuates based on certain paid-in-kind elections, was 11.50% per annum as of December 31, 2020 and March 31, 2021. Interest incurred under the May 2020 First Lien Loan was capitalized into the principal quarterly in August and November 2020, resulting in an outstanding principal of \$275.7 million as of December 31, 2020. Additional interest was capitalized into the principal in the first quarter of 2021, resulting in an outstanding principal of \$286.3 million as of March 31, 2021. We made no payments during 2020 or the first three months of 2021 on the

May 2020 First Lien Term Loan, which has no principal amortization payments until maturity. We expect to repay this loan in full in connection with, and using the proceeds from, the merger transaction with Horizon and the PIPE Subscription.

We have an outstanding loan balance of \$617.1 million under the June 2017 First Lien Loan as of March 31, 2021, which matures on June 30, 2024. Under the June 2017 First Lien Loan, we make quarterly amortization payments of \$1.6 million, which amounted to \$7.0 million during 2019 and \$5.9 million during 2020. During the three months ended March 31, 2021, we made a quarterly amortization payment of \$1.6 million. The effective interest rate on the June 2017 First Lien Loan, which fluctuates based on market interest rates, was 5.3% and 4.5% per annum as of December 31, 2019 and 2020, respectively. The effective interest rate during the three months ended March 31, 2021 was 4.5%. We made no payments under the June 2017 First Lien Loan during 2019, 2020, or the three months ended March 31, 2021, aside from the required quarterly amortization payments and required pre-payments of excess cash flow.

During 2019, we made a payment of \$40 million to fully prepay our June 2017 Second Lien Loan.

As of March 31, 2021, the combined outstanding balance under the Term Loan Facilities, excluding discounts and debt issuance costs, was \$903.4 million.

For additional information on our loan obligations, refer to Note 13 of the audited financial statements included elsewhere in this proxy statement/prospectus/consent solicitation statement.

### ***Tax Receivable Agreement***

At the Closing, Vivid Seats PubCo will enter into the Tax Receivable Agreement with Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders that will provide for the payment by Vivid Seats PubCo to Hoya Topco and the other TRA Holders of 85% of the amount of certain tax benefits, if any, that Vivid Seats PubCo and certain of its subsidiaries actually realizes, or in some circumstances is deemed to realize, as a result of the various transactions occurring in connection with the Closing or in the future that are described above, including benefits arising from tax basis adjustments and certain other tax benefits attributable to payments made under the Tax Receivable Agreement. The payment obligations under the Tax Receivable Agreement are obligations of Vivid Seats PubCo, and we expect that the payments we will be required to make under the tax receivable agreement will be substantial.

The amount and timing of future tax benefits Vivid Seats PubCo realizes as a result of future exchanges of Intermediate Common Units by Hoya Topco and other TRA Holders, and the resulting amounts Vivid Seats PubCo will be required to pay to Hoya Topco and other TRA Holders pursuant to the Tax Receivable Agreement, will vary based on, among other things, (i) the amount and timing of future exchanges of Intermediate Common Units by Hoya Topco and other TRA Holders, and the extent to which such exchanges are taxable, (ii) the price per share of the Vivid Seats Class A common stock at the time of the exchanges, (iii) the amount and timing of future income against which to offset the tax benefits, and (iv) the tax rates then in effect. To date, no exchanges of Intermediate Common Units by Hoya Topco or other TRA Holders have occurred. Due to the uncertainty around the timing and extent of future exchanges, we are unable to estimate the future payment obligations under the Tax Receivable Agreement.

If Vivid Seats PubCo were to elect to terminate the Tax Receivable Agreement immediately after the business combination, assuming the market value of Vivid Seats Class A common stock is equal to \$10 per share, Vivid Seats PubCo currently estimates that it would be required to pay approximately \$430 million to satisfy its total liability.

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For more information about the Tax Receivable Agreement, see the section entitled “Proposal No. 1—The Business Combination Proposal—Related Agreements—Tax Receivable Agreement.”

### Cash Flows

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

	Years Ended December 31,		Three Months Ended March 31,	
	2019	2020	2020	2021
Net cash provided by (used in) operating activities	\$ 76,478	\$ (33,892)	\$ 11,130	\$ 30,761
Net cash used in investing activities	(40,155)	(7,605)	(3,113)	(1,726)
Net cash provided by (used in) financing activities	(55,462)	245,545	48,953	(1,603)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b><u>\$ (19,139)</u></b>	<b><u>\$ 204,048</u></b>	<b><u>\$ 56,970</u></b>	<b><u>\$ 27,432</u></b>

#### *Cash Provided by (Used in) Operating Activities*

During the three months ended March 31, 2020, operating activities generated \$11.1 million in cash and cash equivalents, primarily resulting from a net loss of \$38.5 million, after consideration of non-cash charges of \$25.8 million and a net decrease of \$23.9 million in net operating assets. Net cash generated by changes in operating assets and liabilities for the three months ended March 31, 2020 consisted primarily of an \$85.1 million increase in accrued expenses and other current liabilities, partially offset by a \$50.4 million increase in prepaid expenses and other current assets.

The increase in accrued expenses resulted from an increase in customer credits and accruals for future cancellations related to large-scale cancellations following the onset of the COVID-19 pandemic. The increase in prepaid expenses and other current assets resulted from expected recoveries from ticket sellers on future cancellations. Non-cash charges relate primarily to depreciation and amortization during the three months ended March 31, 2020.

During the three months ended March 31, 2021, operating activities generated \$30.8 million in cash and cash equivalents, primarily resulting from a net loss of \$20.3 million, after consideration of non-cash charges of \$13.3 million and a net decrease of \$37.7 million in net operating assets. Net cash generated by changes in operating assets and liabilities for the three months ended March 31, 2021 consisted primarily of a \$37.9 million increase in accounts payable. The increase in accounts payable resulted primarily from an increase in amounts payable to ticket sellers as sales increased in the first quarter of 2021. Non-cash charges relate primarily to interest expense paid-in-kind during the three months ended March 31, 2021.

During 2019, operating activities generated \$76.5 million in cash and cash equivalents, primarily resulting from a net loss of \$53.8 million, after consideration of non-cash charges of \$104.5 million and a net decrease of \$25.8 million in net operating assets. Net cash generated by changes in operating assets and liabilities for 2019 consisted primarily of a \$23.3 million increase in accrued expenses and other current liabilities. The increase in accrued expenses and other current liabilities resulted from an increase in accrued taxes and other expenses. Non-cash charges relate primarily to depreciation and amortization and equity-based compensation during 2019.

During 2020, operating activities used \$33.9 million in cash and cash equivalents, primarily resulting from a net loss of \$774.2 million, after consideration of non-cash charges of \$646.8 million and a net decrease of \$93.5 million in net operating assets. Net cash generated by changes in operating assets and liabilities for 2020 consisted primarily of a \$195.4 million increase in accrued expenses and a \$4.1 million decrease in inventories, partially offset by a \$67.6 million increase in prepaid expenses and other current assets and a \$28.7 million decrease in accounts payable.

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The increase in accrued expenses resulted from \$125.5 million in customer credits related to large-scale cancellations following the onset of the COVID-19 pandemic in early 2020 and \$94.1 million in accruals for future cancellations, partially offset by reduced marketing and other expenses. The increase in prepaid expenses and other current assets resulted from expected recoveries from ticket sellers on future cancellations, while the decrease in accounts payable resulted from an overall decrease in business activities due to the pandemic. Non-cash charges incurred during 2020 relate primarily to our asset impairments of \$573.8 million, depreciation and amortization of \$48.2 million, and interest paid-in-kind of \$15.7 million.

### ***Cash Used in Investing Activities***

Net cash used in investing activities for the three months ended March 31, 2020 was \$3.1 million, which was almost exclusively related to capital spending on development activities related to our platform.

Net cash used in investing activities for the three months ended March 31, 2021 was \$1.7 million related to capital spending on development activities related to our platform.

Net cash used in investing activities in 2019 was \$40.2 million, which included a payment of \$31.1 million for the acquisition of Fanxchange Limited in April 2019, net of cash acquired. The remaining \$9.1 million was primarily related to capital spending on development activities related to our platform and other product enhancements.

Net cash used in investing activities in 2020 was \$7.6 million, which was almost exclusively related to capital spending on development activities related to our online marketplace.

Our capital spending decreased during 2020 due to cost reductions implemented following the onset of the COVID-19 pandemic in 2019. These cost reductions included a reduction in developer employees, which resulted in lower capitalized development costs, and lower spending on property and equipment.

### ***Cash Provided by (Used in) Financing Activities***

Net cash provided by financing activities for the three months ended March 31, 2020 was \$49.0 million, which resulted primarily from \$50.0 million in proceeds on our Revolving Facility.

Net cash used in financing activities for the three months ended March 31, 2021 was \$1.6 million related to payments on our June 2017 First Lien Loan.

Net cash used in financing activities in 2019 was \$55.5 million. Significant financing activities consisted of a \$40.0 million payment to extinguish our June 2017 Second Lien Loan, and \$7.0 million in payments related to our June 2017 First Lien Loan. We also made tax distributions to our members of \$8.1 million during 2019.

Net cash provided by financing activities in 2020 was \$245.5 million, which resulted primarily from \$260.0 million in proceeds from our May 2020 First Lien Loan. This was partially offset by \$5.9 million in principal payments on our June 2017 First Lien Loan, \$6.5 million arranger fee on the May 2020 First Lien Loan, and \$2.1 million in other debt-related costs. During 2020, we also borrowed \$50.0 million under our Revolving Facility, which was subsequently repaid during the year.

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

As of March 31, 2021, we did not have any off-balance sheet arrangements, as defined in Regulation S-K, that have or are reasonably likely to have a current or future effect on our financial condition, results of operations, or cash flows.



## **Indemnification Agreements**

In the ordinary course of business, we include limited indemnification provisions under certain agreements with parties with whom we have commercial relations of varying scope and terms. Under these contracts, we may indemnify; hold harmless; and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with breach of the agreements; or intellectual property infringement claims made by a third party; including claims by a third party with respect to our domain names, trademarks, logos and other branding elements to the extent that such marks are applicable to its performance under the subject agreement. It is not possible to determine the maximum potential loss under these indemnification provisions due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular provision. To date, no significant costs have been incurred, either individually or collectively, in connection with our indemnification provisions.

In addition, we have entered into indemnification agreements with our directors, executive officers, and certain other employees that require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, executive officers, or employees.

## **Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). Preparation of our financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs, and expenses, and related disclosures. On an ongoing basis, we evaluate our estimates and assumptions. Actual results may differ from these estimates under different assumptions or conditions. We believe that the assumptions and estimates associated with revenue recognition; equity-based compensation; and impairment of our goodwill, indefinite-lived intangible assets, definite-lived intangible assets, and long-lived assets have the greatest potential impact on our consolidated financial statements. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our consolidated balance sheets, results of operations, and cash flows.

### ***Revenue Recognition***

Revenue from our Marketplace segment primarily consists of service and delivery fees from ticketing operations, reduced by incentives provided to ticket buyers. We also recognize revenue for referral fees earned on the purchase of ticket insurance by ticket buyers from third-party insurers. We recognize revenue from our Marketplace segment when the ticket seller confirms an order with the ticket buyer, at which point the seller is obligated to deliver the tickets to the ticket buyer in accordance with the original marketplace listing. Revenue from Marketplace transactions is recognized on a net basis, because we act as an agent for these transactions.

When a cancellation charge is incurred, previously recognized revenue is reversed. We estimate future cancellation charges for ticketed events sold in our marketplace, with a corresponding reduction to revenue. We estimate future cancellations based on the amount of recorded sales transactions in our marketplace and cancellation charge history for those types of events. Specific judgments and assumptions considered when estimating future cancellations under normal circumstances include historical cancellation charges as a percentage of revenues, the average length of time to realize such charges, and the potential exposure based on recent sales activity. Starting in the first quarter of 2020, we also project future event cancellations when estimating future cancellation charges. Prior to the COVID-19 pandemic, future cancellation charges resulting specifically from event cancellations were immaterial. Factors considered when projecting the impact of future event cancellations include historical event cancellation rates, known developments in the COVID-19 pandemic, including mitigation measures enacted by governmental authorities, and the amount of ticket sales potentially exposed based on recent sales activity. Such estimates are inherently uncertain as we are unable to predict the actual cancellations that will occur. As a result of the COVID-19 pandemic, cancellation charge estimates increased materially in 2020 due to the large-scale volume of cancellations that occurred as a result of the

pandemic. Actual cancellation charges recorded may be materially different amounts than we have estimated due to developments in the COVID-19 pandemic and their impact on the number of canceled events.

The amount of estimated payments to customers for future cancellation charges, known as accrued future customer compensation, is classified within accrued expenses and other current liabilities, with a corresponding asset for expected recoveries from ticket sellers recorded within prepaid expenses and other current assets on our consolidated balance sheets. When an event is cancelled, ticket buyers may select to receive either a cash refund or credit for future purchases in our marketplace. When a credit is redeemed, revenue is recognized.

Due to the timing of event cancellations and the volume of cancellations resulting from the COVID-19 pandemic, amounts provided to customers for cancelled events may exceed net sales in certain periods, resulting in negative revenue for the period.

We also offer our customers the opportunity to participate in our loyalty program through our Marketplace segment, which allows customers to earn credits based on Owned Properties transactions. Customers may redeem these credits on future transactions processed in our marketplace. We defer revenue associated with these credits, which is recorded as deferred revenue on our consolidated balance sheets. We recognize breakage income from customer credits, including those processed for event cancellations. Breakage income, which is recorded as revenue, is based on historic customer redemption patterns. We have not made any material changes in the methodologies, estimates, or assumptions related to breakage income during the periods presented and do not believe there is a reasonable likelihood that there will be a material change in the estimates or assumptions in the future.

Revenue from our Resale business primarily consists of sales of tickets to customers through online secondary marketplaces. We recognize Resale revenue on a gross basis because we act as a principal in these transactions. We recognize Resale revenue when an order is confirmed.

### **Equity-Based Compensation**

Certain members of management have been granted equity-based awards, consisting primarily of incentive units, in our parent, Hoya Topco, LLC. The fair value of the incentive units granted is estimated using the Black-Scholes option-pricing model, which is based on the fair value of our parent's equity units.

Given the absence of a public trading market for our parent's common units, and in accordance with the *American Institute of Certified Public Accountants Accounting and Valuation Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation*, management exercised its reasonable judgment and considered numerous objective and subjective factors to determine the best estimate of fair value of our parent's equity, including (i) independent third-party valuations; (ii) forecasted income and expenses; (iii) the rights, preferences, and privileges of our preferred units relative to common units; (iv) the likelihood and timing of achieving a liquidity event; (v) the lack of marketability of our common units; and (vi) valuations of comparable companies. The equity value of our parent is used to estimate the grant date fair value of equity-based awards using a Black-Scholes option pricing model.

The Black-Scholes option-pricing model requires certain subjective inputs and assumptions, including the fair value of our parent's equity, the expected term, risk-free interest rates, and expected equity volatility. The fair value of incentive units is recognized as equity-based compensation expense on a straight-line basis over the requisite service period. We account for forfeitures as they occur.

Changes in assumptions made on i) expected term, ii) the risk-free rate of interest, and iii) expected volatility can materially impact the estimate of fair value and ultimately how much share-based compensation expense is recognized. The expected term is estimated based on the timing and probabilities until a major liquidity event. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant and corresponds to the expected term. The expected volatility is estimated on the date of grant based on the average historical stock price volatility of comparable publicly-traded companies.

We continue to use judgment in evaluating the expected volatility and expected term utilized in our equity-based compensation expense calculation on a prospective basis. As we continue to accumulate additional data related to our common units, we may refine our estimates of expected volatility and expected term, which could materially impact our future equity-based compensation expense.

Total equity-based compensation expense was \$5.2 million and \$4.3 million in the years ended December 31, 2019 and 2020, respectively. Total equity-based compensation expense was \$1.2 million and \$1.1 million during the three months ended March 31, 2020 and 2021, respectively.

#### ***Impairment of Goodwill, Indefinite-Lived Intangible Assets, Definite-Lived Intangible Assets, and Other Long-Lived Assets***

We assess goodwill and our indefinite-lived intangible asset (our trademark) for impairment annually, or more frequently if events or changes in circumstances indicate that an asset may be impaired. We assess definite-lived intangible assets and other long-lived assets (collectively, “long-lived assets”) for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable.

We identified the COVID-19 pandemic as a potential triggering event for impairment of our goodwill, indefinite-lived trademark, and long-lived assets. Due to global social distancing efforts to mitigate the spread of the virus, in addition to compliance with restrictions enacted by various governmental entities, most live events during 2020 were either postponed or cancelled. Consequently, we experienced a significant reduction of revenue during the first half of 2020, which continued through the remainder of the year. As a result, we assessed our goodwill, trademark, and long-lived assets for impairment as of June 30, 2020, which resulted in impairment charges of \$573.8 million.

#### ***Goodwill and Indefinite-lived Intangible Asset (Trademark)***

We account for acquired businesses using the acquisition method of accounting which requires that the assets acquired and liabilities assumed be recorded at the date of acquisition at their respective fair values. Our goodwill and our indefinite-lived trademark are held by our Marketplace segment, which contains one reporting unit.

Goodwill is not subject to amortization and is reviewed for impairment annually, or earlier whenever events or changes in business circumstances indicate an impairment may have occurred. We assess goodwill for impairment at the reporting unit level. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value, with an impairment charge recognized for the difference.

In developing fair values for our reporting unit, we use a discounted cash flow valuation approach, supplemented with a market multiple valuation approach. Significant estimates used in the discounted cash flow models include (i) risk-adjusted discount rates, (ii) forecasted revenue and operating expenses, (iii) forecasted capital expenditures and working capital needs, and (iv) long-term growth rates. These estimates are uncertain as actual discount rates, revenue, operating expenses, capital expenditures, working capital needs, and long-term growth rates may be different than those we have forecasted. These estimates considered the recent deterioration in financial performance of our Marketplace reporting unit, as well as the anticipated rate of recovery, and implied risk premiums based on the market prices of our equity and debt as of the assessment date. We ultimately determined that the carrying value of our Marketplace reporting unit exceeded its estimated fair value, resulting in a goodwill impairment charge of \$377.1 million during the second quarter of 2020.

Our goodwill balance is not currently at risk for additional impairment, as the fair value of our Marketplace reporting unit significantly exceeds its carrying value.

Similar to goodwill, our indefinite-lived trademark is not amortized, but reviewed for impairment annually, or earlier whenever events or changes in business circumstances indicate that the carrying value may not be

recoverable. In conjunction with the goodwill impairment event triggered by the COVID-19 pandemic, we also assessed our indefinite-lived trademark for impairment in the second quarter of 2020, resulting in an impairment charge of \$78.7 million.

We estimate the fair value of our indefinite-lived trademark based on forecasted revenues and a reasonable royalty rate using the relief from royalty valuation method. During 2020, we utilized a 2% royalty rate, consistent with the rate used in the initial valuation of the trademark. Each reporting period, we perform an evaluation of the remaining useful life of our indefinite-lived trademark to determine whether events and circumstances continue to support an indefinite life. We consider the life of our indefinite-lived trademark to be appropriate.

#### *Long-lived assets*

We also periodically review the carrying amount of our long-lived assets, including definite-lived intangible assets, property and equipment, personal seat licenses, and right-of-use lease assets, to determine whether current events or business circumstances indicate that the carrying amounts of an asset or asset group may not be recoverable. We classify our long-lived assets as a single asset group, which consists primarily of definite-lived intangible assets, property and equipment, personal seat licenses, and right-of-use lease assets. Our definite-lived intangible assets consist of developed technology, customer and supplier relationships, and non-compete agreements.

We assessed our long-lived assets for impairment during the second quarter of 2020, which resulted in an impairment charge of \$118.0 million. Significant judgment and estimates were required in assessing impairment of our long-lived assets, including identifying whether events or changes in circumstances require an impairment assessment, and estimating future cash flows and determining appropriate discount rates. Our estimates of fair value are based on assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. The resulting impairment charge resulted in a complete write-off of our definite-lived intangible assets, property and equipment, personal seat licenses, and right-of-use lease assets as of June 30, 2020.

#### **Recent Accounting Pronouncements**

See Note 2 to our audited consolidated financial statements and Note 2 to our unaudited condensed consolidated financial statements included elsewhere in this proxy statement/prospectus/consent solicitation statement for a description of recently adopted accounting pronouncements and issued accounting pronouncements not yet adopted.

#### **JOBS Act Accounting Election**

Section 107 of the JOBS Act allows emerging growth companies to take advantage of the extended transition period for complying with new or revised accounting standards. Under Section 107, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. Any decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable. We have elected to use the extended transition period under the JOBS Act.

#### **Quantitative and Qualitative Disclosures about Market Risk**

Market risk is the potential loss from adverse changes in interest rates, foreign exchange rates, and market prices. Our primary market risk is interest rate risk associated with our long-term debt. We manage our exposure to this risk through established policies and procedures. Our objective is to mitigate potential income statement, cash flow, and market exposures from changes in interest rates.

***Interest Rate Risk***

Our market risk is affected by changes in interest rates. We maintain floating-rate debt that bears interest based on market rates plus an applicable spread. Because our interest rate is tied to market rates, we will be susceptible to fluctuations in interest rates if we do not hedge the interest rate exposure arising from our floating-rate borrowings.

In November 2017, we entered into interest rate swaps that were designated as cash flow hedges for accounting purposes to manage our exposure to interest rate movements and to effectively convert a portion of our floating-rate debt to a fixed-rate basis. The swap agreements matured on September 30, 2020 with a combined notional value of \$520.7 million. In November 2018, we entered into an interest rate cap to receive payment for the excess of the floating rate above a strike rate. The cap agreement matures on September 30, 2021 and has a notional value of \$517.7 million as of March 31, 2021.

## DESCRIPTION OF CERTAIN INDEBTEDNESS

### 2017 First Lien Loans

In June 2017, Hoya Midco, as borrower (the “Borrower”), Hoya Intermediate, as Holdings and a guarantor (“Holdings”), and certain subsidiaries of Hoya Midco, as guarantors, entered into (x) a First Lien Credit Agreement with Barclays Bank PLC, as administrative agent and collateral agent, and the lenders from time to time party thereto (the “June 2017 First Lien Credit Agreement”) and (y) a Second Lien Credit Agreement with U.S. Bank, National Association, as administrative agent and collateral agent, and the lenders from time to time party thereto (the “June 2017 Second Lien Credit Agreement”). The original facilities under the June 2017 First Lien Credit Agreement consisted of a \$525 million term loan (the “Initial Term Loan”) and a \$50 million revolving credit facility (the “Revolving Facility”). An additional \$115 million of incremental term loans were funded under the June 2017 First Lien Credit Agreement on July 2, 2018 (the “Incremental Term Loan” and, together with the Initial Term Loan, the “June 2017 First Lien Loan”). The original facility under the June 2017 Second Lien Credit Agreement consisted of a \$185 million term loan (the “June 2017 Second Lien Loan”).

In October 2019, the June 2017 Second Lien Loan was repaid in full and the June 2017 Second Lien Credit Agreement was terminated in its entirety. The Revolving Facility was terminated in full in May 2020 such that the only loan outstanding under the June 2017 First Lien Credit Agreement is the June 2017 First Lien Loan. The June 2017 First Lien Loan matures on June 30, 2024 and can be repaid in whole or in part prior to maturity at our option, with no penalty or premium, subject to customary conditions.

### *Interest and Fees*

The June 2017 First Lien Loan bears periodic interest at the Borrower’s option at either (A) the LIBOR rate plus an applicable margin, ranging from 3.00% to 3.50% per annum based on the Company’s first lien net leverage ratio, or (B) the base rate (which is the greatest of (i) the Federal Funds Effective Rate plus 0.50%, (ii) the “prime rate” announced from time to time by the Wall Street Journal, or (iii) the one-month LIBOR rate plus 1.00% (such greatest rate, the “Base Rate”)) plus an applicable margin, ranging from 2.00% to 2.50% per annum based on the Company’s first lien net leverage ratio (such margins being referred to as the “Applicable Margin”). The LIBOR rate for the June 2017 First Lien Loan is subject to a 1.00% floor.

Interest on Base Rate borrowings is payable in arrears on the last business day of each March, June, September, and December and upon any prepayment or repayment of the June 2017 First Lien Loan. Interest on LIBOR borrowings is payable (i) at the end of each applicable interest period and, for interest periods in excess of 3 months, every 3 months from the beginning of such interest period, (ii) upon any prepayment or repayment of the June 2017 First Lien Loan and (iii) upon any conversion of a LIBOR loan prior to the end of the applicable interest period.

During the continuance of any payment event of default, interest on all past due amounts will accrue at 2% per annum in excess of the applicable rate.

We pay certain customary administration fees under the June 2017 First Lien Credit Agreement.

### *Guarantees and Security*

All outstanding obligations under the June 2017 First Lien Credit Agreement are unconditionally guaranteed by substantially all of our existing and future, direct and indirect, wholly-owned material domestic subsidiaries, subject to certain exceptions. All outstanding obligations under the June 2017 First Lien Credit Agreement, and the guarantees of such obligations, are secured by substantially all of our and our subsidiary guarantors’ assets, subject to certain exceptions.

### ***Amortization***

We are required to repay the June 2017 First Lien Loan in quarterly installments of \$1,602,904 on the last day of each fiscal quarter. The remaining principal amount outstanding under the June 2017 First Lien Loan will be due and payable on the maturity date.

### ***Voluntary and Mandatory Prepayments***

We may prepay at our option, in full or in part, borrowings under the June 2017 First Lien Credit Agreement, subject to notice requirements, minimum prepayment amounts and increment limitations.

The June 2017 First Lien Credit Agreement requires us to prepay any outstanding June 2017 First Lien Loan with:

- 50% of excess cash flow in excess of \$2.5 million, with such percentage subject to reduction to 25% or 0% upon achievement of a first lien net leverage ratio less than or equal to 4.50 to 1.00 or 4.00 to 1.00, respectively;
- 100% of the net cash proceeds of (i) all non-ordinary course asset sales or other dispositions of property, in each case in excess of \$15 million per transaction or series of related transactions or \$30 million per fiscal year, or (ii) certain casualty events in excess of \$20 million, in each case with such percentage subject to reduction to 50% or 0% upon achievement of a senior secured net leverage ratio less than or equal to 6.00 to 1.00 or 5.25 to 1.00, respectively. This prepayment is subject to customary reinvestment rights, which must be exercised within 12 months (or if committed to be so invested within such 12-month period, within six months following such 12-month period);
- 100% of the net cash proceeds of all incurrence or issuance of any indebtedness by the Borrower or its restricted subsidiaries (except for permitted debt (other than refinancing debt));

in each case, subject to certain exceptions and exclusions, but without any prepayment premium or penalty. Mandatory prepayments may be shared between the June 2017 First Lien Loan and the May 2020 First Lien Loan (as defined below) on a pro rata basis.

### ***Certain Covenants and Events of Default***

The June 2017 First Lien Credit Agreement contains a number of covenants that restrict, subject to certain exceptions, the Borrower's and its restricted subsidiaries' ability to, among other things:

- incur additional indebtedness;
- create or incur liens;
- engage in certain fundamental changes, including mergers or consolidations;
- sell or transfer assets;
- allow material intellectual property to be held by a non-loan party;
- pay dividends and distributions on their and their subsidiaries' capital stock;
- make payments and prepayments of subordinated, junior or unsecured indebtedness;
- make acquisitions, investments, loans, or advances;
- engage in certain transactions with affiliates; and
- enter into negative pledge clauses.

The June 2017 First Lien Credit Agreement also contains a customary Holdings passivity covenant, certain customary affirmative covenants, and customary events of default, including a change of control event of default.

If an event of default occurs, the lenders under the June 2017 First Lien Credit Agreement will be entitled to take various actions, including the acceleration of amounts due under the June 2017 First Lien Credit Agreement and all actions permitted to be taken by a secured creditor, subject to the terms of the intercreditor agreement that governs the June 2017 First Lien Credit Agreement and the May 2020 First Lien Credit Agreement (as defined below) (the “June 2017 First Lien Intercreditor Agreement”).

## **2020 First Lien Loan**

In May 2020, the Borrower, as borrower, Holdings, as a guarantor, and certain subsidiaries of the Borrower, as guarantors, entered into a Credit Agreement with Wilmington Trust, National Association, as administrative agent and collateral agent, and the lenders from time to time party thereto (the “May 2020 First Lien Credit Agreement”), which provided for a \$260 million term loan (the “May 2020 First Lien Loan”). The May 2020 First Lien Loan matures on May 22, 2026, subject to an earlier maturity date of June 30, 2024 (the “Springing Maturity Date”) if any loans incurred under the June 2017 First Lien Credit Agreement (or refinancing indebtedness in respect thereof) with scheduled payments of principal prior to June 30, 2024 are outstanding as of the Springing Maturity Date.

## ***Interest and Fees***

Subject to the following paragraph, the May 2020 First Lien Loan bears periodic interest at the Borrower’s option at either the LIBOR rate plus an Applicable Margin of 9.50% per year, or the Base Rate plus an Applicable Margin of 8.50% per year. The LIBOR rate is subject to a 1.00% floor and the Base Rate is subject to a 2.00% floor.

For any period ending prior to May 22, 2022, the Borrower may elect to have all of the interest for such period paid in kind, and for any period ending on or after May 22, 2022 but prior to May 22, 2023, the Borrower may elect to have all or a portion of the interest for the applicable interest period paid in kind (any such election, a “PIK Election”). Any interest for which a PIK Election has been made will not be paid in cash, but rather shall be automatically capitalized and added to (and constitute part of) the then-outstanding principal amount of the May 2020 First Lien Loan as of the applicable interest payment date. If a PIK Election has been made with respect to any May 2020 First Lien Loan, interest shall accrue on such portion as follows:

- for any date occurring prior to May 22, 2022, interest shall accrue at a rate of 11.50% per annum;
- with respect to Base Rate loans for any date occurring on and after May 22, 2022 but prior to May 22, 2023:
  - (A) with respect to the portion of the loan for which the PIK Election was made, the sum of (x) 5.00% per annum, payable in kind and (y) the Base Rate plus 4.00%, payable in cash, and
  - (B) with respect to the remaining portion of the loan, if any, the Base Rate plus 8.50%, payable in cash; and
- with respect to LIBOR rate loans for any date occurring on and after May 22, 2022 but prior to May 22, 2023:
  - (A) with respect to the portion of the loan for which the PIK Election was made, the sum of (x) 5.00% per annum, payable in kind and (y) the LIBOR rate plus 5.00%, payable in cash, and
  - (B) with respect to the remaining portion of the loan, if any, the LIBOR rate plus 9.50%, payable in cash.

Interest on base rate borrowings is payable in arrears on the last business day of each March, June, September, and December and upon any prepayment or repayment of the May 2020 First Lien Loan. Interest on LIBOR borrowings is payable (i) at the end of each applicable interest period and, for interest periods in excess of 3 months, every 3 months from the beginning of such interest period, (ii) upon any prepayment or repayment of the May 2020 First Lien Loan and (iii) upon any conversion of a LIBOR loan prior to the end of the applicable interest period.



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During the continuance of any payment event of default, interest on all past due amounts will accrue at 2% per annum in excess of the applicable rate.

We pay certain customary administration fees under the May 2020 First Lien Credit Agreement.

### ***Guarantees and Security***

All obligations under the May 2020 First Lien Credit Agreement are unconditionally guaranteed by the same guarantors that guarantee the obligations under the June 2017 First Lien Credit Agreement. All obligations under the May 2020 First Lien Credit Agreement, and the guarantees of such obligations, are secured by the same collateral that secures the obligations under the June 2017 First Lien Credit Agreement (and on a pari passu basis with the obligations under the June 2017 First Lien Credit Agreement).

### ***Voluntary and Mandatory Prepayments***

The May 2020 First Lien does not amortize; all outstanding amounts thereunder will be due and payable on the maturity date (or if the same is triggered, the Springing Maturity Date).

We may prepay at our option, in full or in part, borrowings under the May 2020 First Lien Credit Agreement, subject to notice requirements, minimum prepayment amounts and increment limitations. Any such voluntary prepayment that is made prior to May 22, 2023 will be subject to the following prepayment premium:

- if the aggregate amount prepaid during such period is less than or equal to \$91 million, 3% of the amount so prepaid;
- if the aggregate amount prepaid during such period is greater than \$91 million, then (x) with respect to the first \$91 million so prepaid, 3%, and (y) with respect to the amount in excess of \$91 million so prepaid:
  - (A) if such prepayment is made prior to May 22, 2022, a make-whole premium (the “Make-Whole Amount”) equal to the greater of (i) 6% of the applicable principal amount and (ii) the excess of (a) the present value on the date that the applicable prepayment or repricing is consummated of (1) the prepayment price of the May 2020 First Lien Loans paid on May 22, 2022 plus (2) all required remaining scheduled interest payments due on the prepaid May 2020 First Lien Loan through May 22, 2022 (assuming that the rate of interest will be equal to the rate of cash interest applicable to LIBOR loans with a 3-month Interest Period), in the case of each of clauses (1) and (2) above, computed using a discount rate equal to the treasury rate plus 50 basis points per annum discounted on a semi-annual bond equivalent basis, over (b) the principal amount of the prepaid May 2020 First Lien Loan on such prepayment date; and
  - (B) if such prepayment is made on or after May 22, 2022 but prior to May 22, 2023, 6%.

The May 2020 First Lien Credit Agreement includes the same excess cash flow, asset sale and casualty event, and non-permitted debt mandatory prepayments as are included in the First Lien Credit Agreement. Mandatory prepayments may be shared between the June 2017 First Lien Loan and the May 2020 First Lien Loan on a pro rata basis. Certain repricing transactions, as well as the asset sale and non-permitted debt mandatory prepayments, will be subject to the prepayment premium described in the preceding paragraph.

### ***Certain Covenants and Events of Default***

The May 2020 First Lien Credit Agreement contains a number of covenants that restrict, subject to certain exceptions, the Borrower’s and its restricted subsidiaries’ ability to, among other things:

- incur additional indebtedness;

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- create or incur liens;
- engage in certain fundamental changes, including mergers or consolidations;
- sell or transfer assets;
- allow material intellectual property to be held by a non-loan party;
- pay dividends and distributions on their and their subsidiaries' capital stock;
- make payments and prepayments of subordinated, junior or unsecured indebtedness;
- make acquisitions, investments, loans, or advances;
- engage in certain transactions with affiliates; and
- enter into negative pledge clauses.

The May 2020 First Lien Credit Agreement also contains a customary Holdings passivity covenant, certain customary affirmative covenants, and customary events of default, including a change of control event of default. If an event of default occurs, the lenders under the May 2020 First Lien Credit Agreement will be entitled to take various actions, including the acceleration of amounts due under the May 2020 First Lien Credit Agreement and all actions permitted to be taken by a secured creditor, subject to the terms of the June 2017 First Lien Intercreditor Agreement.

## DESCRIPTION OF VIVID SEATS PUBCO SECURITIES

*As a result of the business combination, Horizon shareholders who receive shares of Vivid Seats Class A common stock in the business combination will become Vivid Seats PubCo stockholders. Your rights as Vivid Seats PubCo stockholders will be governed by Delaware law and the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws. The following description of the material terms of Vivid Seats PubCo's securities reflects the anticipated state of affairs upon the Closing.*

*The following summary of the material terms of Vivid Seats PubCo's securities following the business combination is not intended to be a complete summary of the rights and preferences of such securities. The full text of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws are attached as Annex C and Annex D, respectively, to this proxy statement/prospectus/consent solicitation statement. You are encouraged to read the applicable provisions of Delaware law, the Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws in their entirety for a complete description of the rights and preferences of Vivid Seats PubCo's securities following the business combination.*

### Authorized and Outstanding Capital Stock

The Vivid Seats PubCo Amended and Restated Charter authorizes the issuance of 800,000,000 shares, of which 500,000,000 shares will be shares of Vivid Seats Class A common stock, par value \$0.0001 per share, 250,000,000 shares will be shares of Vivid Seats Class B common stock, par value \$0.0001 per share and 50,000,000 shares will be shares of preferred stock of Vivid Seats PubCo, par value \$0.0001 per share.

As of \_\_\_\_\_, 2021, the record date, Horizon had approximately \_\_\_\_\_ Horizon Class A ordinary shares, \_\_\_\_\_ Horizon Class B ordinary shares and warrants to purchase \_\_\_\_\_ Horizon Class A ordinary shares, issued and outstanding. As of such date, there were \_\_\_\_\_ holders of record of Horizon Class A ordinary shares, \_\_\_\_\_ holders of record of Horizon Class B ordinary shares, and \_\_\_\_\_ holders of record of Horizon Warrants. After giving effect to the business combination and based on the number of shares of Horizon ordinary shares outstanding as of the record date, Vivid Seats PubCo will have approximately \_\_\_\_\_ shares of Vivid Seats Class A common stock outstanding (assuming no redemptions) and \_\_\_\_\_ shares of Vivid Seats Class B common stock outstanding.

### Common Stock

#### Voting

Except as otherwise required by the Vivid Seats PubCo Amended and Restated Charter, holders of Vivid Seats Class A common stock and Vivid Seats Class B common stock will vote together as a single class on all matters on which stockholders are generally entitled to vote. Each holder of Vivid Seats Class A common stock will be entitled to one vote per share and each holder of Vivid Seats Class B common stock will be entitled to one vote per share. Pursuant to the Vivid Seats PubCo Amended and Restated Charter, the holders of the outstanding shares of Vivid Seats Class A common stock and Vivid Seats Class B common stock shall be entitled to vote separately as a class upon any amendment to the Vivid Seats PubCo Amended and Restated Charter (including by merger, consolidation, reorganization or similar event or otherwise) that would alter or change the powers, preferences, or special rights of a class of stock so as to affect them adversely.

Following the Closing, Hoya Topco will control approximately 60.6% of the combined voting power of Vivid Seats PubCo's common stock as a result of its ownership of all of the shares of Vivid Seats Class B common stock. Accordingly, Private Equity Owner, through its control of Hoya Topco, will control Vivid Seats PubCo's business policies and affairs and can control any action requiring the general approval of its stockholders.

### ***Dividends***

The holders of Vivid Seats Class A common stock are entitled to receive dividends, as and if declared by the Vivid Seats Board out of the assets of Vivid Seats PubCo that are by law available for such use. Dividends shall not be declared or paid on the Vivid Seats Class B common stock.

### ***Liquidation or Dissolution***

Upon Vivid Seats PubCo's liquidation, dissolution or winding up of the affairs of Vivid Seats PubCo, after payment or provision for payment of the debts and other liabilities of Vivid Seats PubCo as required by law 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 Vivid Seats Class A common stock will be entitled to receive the remaining assets of Vivid Seats PubCo available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Vivid Seats Class B common stock shall not be entitled to receive any assets of Vivid Seats PubCo in the event of any such liquidation, dissolution or winding up the affairs of Vivid Seats PubCo.

### ***Redemption Rights***

Vivid Seats PubCo will at all times reserve and keep available out of its authorized and unissued shares of Vivid Seats Class A common stock, for the purposes of effecting any redemptions or exchanges pursuant to the applicable provisions of Article IX of the Second A&R LLCA, the number of shares of Vivid Seats Class A common stock that are issuable in connection with the redemption or exchange of all outstanding Intermediate Common Units as a result of any Redemption or Direct Exchange (each as defined in the Second A&R LLCA) pursuant to the applicable provisions of Article IX of the Second A&R LLCA, as applicable. In the event that (a) a share of Vivid Seats Class A common stock is issued as a result of any Redemption or Direct Exchange of an Intermediate Common Unit pursuant to the applicable provisions of Article IX of the Second A&R LLCA or (b) a Redemption by Cash Payment (as defined in the Second A&R LLCA) is effected with respect to any Intermediate Common Units pursuant to the applicable provisions of Article IX of the Second A&R LLCA, a share of Vivid Seats Class B common stock held by such unitholder chosen by Vivid Seats PubCo in its sole discretion will automatically and without further action on the part of Vivid Seats PubCo or the holder thereof be transferred to Vivid Seats PubCo for no consideration and thereupon shall automatically be retired and cease to exist, and such share thereafter may not be reissued by Vivid Seats PubCo.

### ***Other Provisions***

None of the Vivid Seats Class A common stock and Vivid Seats Class B common stock has any pre-emptive or other subscription rights.

### ***Preferred Stock***

Vivid Seats PubCo is authorized to issue up to 50,000,000 shares of preferred stock. The Vivid Seats Board is authorized, subject to limitations prescribed by law, to provide for the issuance of shares of preferred stock in one or more series, and with respect to each series, to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other special rights, if any, of the shares of each such series, and any qualifications, limitations or restrictions thereof. The powers (including voting powers), preferences, and relative, participating, optional and other special rights of each series of preferred stock and the qualifications, limitations or restrictions thereof, if any, may differ from those of any other series at any time outstanding. Subject to the rights of the holders of any series of preferred stock, the number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares of preferred stock then outstanding) by the approval of the Vivid Seats Board and by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of Vivid Seats PubCo entitled to vote generally in an election of directors, without the separate vote of the holders of the preferred stock as a class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

## **Redeemable Warrants**

### ***Vivid Seats PubCo IPO Exchange Warrants — Public***

In connection with the business combination, each Horizon IPO Public Warrant will be converted into a corresponding Vivid Seats Public IPO Warrant. The terms of the Vivid Seats Public IPO Warrants are identical to those of the Horizon IPO Public Warrants.

Each whole Vivid Seats Public IPO Warrant entitles the registered holder to purchase one share of Vivid Seats Class A common stock at a price of \$11.50 per share, subject to adjustment as discussed below, at any time commencing on the later of one year from the closing of the IPO and 30 days after the completion of the business combination, except as discussed in the immediately succeeding paragraph. Pursuant to the Existing Warrant Agreement, a warrant holder may exercise its warrants only for a whole number of shares of Vivid Seats Class A common stock. This means only a whole warrant may be exercised at a given time by a warrant holder. The Vivid Seats Public IPO Warrants will expire five years after the completion of the business combination, at 5:00 p.m., New York City time, or earlier upon redemption or liquidation.

We will not be obligated to deliver any shares of Vivid Seats Class A common stock pursuant to the exercise of a Vivid Seats Public IPO Warrant and will have no obligation to settle such exercise unless a registration statement under the Securities Act with respect to the Vivid Seats Class A common stock underlying such warrants is then effective and a prospectus relating thereto is current, subject to our satisfying our obligations described below with respect to registration, or a valid exemption from registration is available, including in connection with a cashless exercise permitted as a result of a notice of redemption described below under “Redemption of Vivid Seats Public IPO Warrants when the price per share of Vivid Seats Class A common stock equals or exceeds \$10.00.” No Vivid Seats Public IPO Warrant will be exercisable and we will not be obligated to issue a share of Vivid Seats Class A common stock upon exercise of a Vivid Seats Public IPO Warrant unless the share of Vivid Seats Class A common stock issuable upon such warrant exercise has been registered, qualified or deemed to be exempt under the securities laws of the state of residence of the registered holder of such warrants. In the event that the conditions in the two immediately preceding sentences are not satisfied with respect to a Vivid Seats Public IPO Warrant, the holder of such warrant will not be entitled to exercise such warrant and such warrant may have no value and expire worthless. In no event will we be required to net cash settle any warrant.

We have agreed that, as soon as practicable, but in no event later than 15 business days after the closing of the business combination, we will use commercially reasonable efforts to file with the SEC a registration statement for the registration, under the Securities Act, of the Vivid Seats Class A common stock issuable upon exercise of the Vivid Seats Public IPO Warrants. We will use commercially reasonable efforts to cause the same to become effective within 60 business days after the closing of the business combination and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Vivid Seats Public IPO Warrants in accordance with the provisions of the Existing Warrant Agreement. If a registration statement covering the issuance of the Vivid Seats Class A common stock issuable upon exercise of the warrants is not effective by the 60th business day after the closing of the business combination, holders of Vivid Seats Public IPO Warrants may, until such time as there is an effective registration statement and during any period when we will have failed to maintain an effective registration statement, exercise such warrants on a “cashless basis” in accordance with Section 3(a)(9) of the Securities Act or another exemption. Notwithstanding the above, if our shares of Vivid Seats Class A common stock are at the time of any exercise of a Vivid Seats Public IPO Warrant not listed on a national securities exchange such that they satisfy the definition of a “covered security” under Section 18(b)(1) of the Securities Act, we may, at our option, require holders of such warrants who exercise their Vivid Seats Public IPO Warrants to do so on a “cashless basis” in accordance with Section 3(a)(9) of the Securities Act and, in the event we so elect, we will not be required to file or maintain in effect a registration statement, and in the event we do not so elect, we will use commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available. In such event, each holder would pay the exercise price by surrendering the Vivid Seats Public IPO Warrants for that

number of shares of Vivid Seats Class A common stock equal to the lesser of (A) the quotient obtained by dividing (x) the product of the number of shares of Vivid Seats Class A common stock underlying the Vivid Seats Public IPO Warrants, multiplied by the excess of the “fair market value” (defined below) less the exercise price of the Vivid Seats Public IPO Warrants by (y) the fair market value and (B) 0.361 Vivid Seats Class A common stock per Vivid Seats Public IPO Warrant. The “fair market value” as used in this paragraph shall mean the volume weighted average price of the shares of Vivid Seats Class A common stock for the 10 trading days ending on the trading day prior to the date on which the notice of exercise is received by the warrant agent.

*Redemption of Vivid Seats Public IPO Warrants When the Price Per Share of Vivid Seats Class A Common Stock Equals or Exceeds \$18.00*

Once the Vivid Seats Public IPO Warrants become exercisable, we may call the outstanding Vivid Seats Public IPO Warrants for redemption:

- in whole and not in part;
- at a price of \$0.01 per Vivid Seats Public IPO Warrant;
- upon a minimum of 30 days’ prior written notice of redemption (the “30-day redemption period”) to each holder of Vivid Seats Public IPO Warrants; and
- if, and only if, the closing price of the shares of Vivid Seats Class A common stock equals or exceeds \$18.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a Vivid Seats Public IPO Warrant as described under the heading “— Vivid Seats PubCo IPO Exchange Warrants — Public — Anti-Dilution Adjustments”) for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the holders of Vivid Seats Public IPO Warrants.

We will not redeem the Vivid Seats Public IPO Warrants as described above unless a registration statement under the Securities Act covering the issuance of the shares of Vivid Seats Class A common stock issuable upon exercise of the Vivid Seats Public IPO Warrants is then effective and a current prospectus relating to those shares of Vivid Seats Class A common stock is available throughout the 30-day redemption period. If and when the Vivid Seats Public IPO Warrants become redeemable by us, we may exercise our redemption right even if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws.

We have established the last of the redemption criterion discussed above to prevent a redemption call unless there is at the time of the call a significant premium to the warrant exercise price. If the foregoing conditions are satisfied and we issue a notice of redemption of the Vivid Seats Public IPO Warrants, each holder of such warrants will be entitled to exercise his, her or its Vivid Seats Public IPO Warrants prior to the scheduled redemption date. However, the price of the shares of Vivid Seats Class A common stock may fall below the \$18.00 redemption trigger price (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a Vivid Seats Public IPO Warrant as described under the heading “— Vivid Seats PubCo IPO Exchange Warrants — Public — Anti-Dilution Adjustments”) as well as the \$11.50 (for whole shares) warrant exercise price after the redemption notice is issued.

*Redemption of Vivid Seats Public IPO Warrants When the Price Per Share of Vivid Seats Class A Common Stock Equals or Exceeds \$10.00*

Once the Vivid Seats Public IPO Warrants become exercisable, we may call the outstanding Vivid Seats Public IPO Warrants for redemption:

- in whole and not in part;
- at \$0.10 per Vivid Seats Public IPO Warrant upon a minimum of 30 days’ prior written notice of redemption provided that holders will be able to exercise their Vivid Seats Public IPO Warrants on a

cashless basis prior to redemption and receive that number of shares of Vivid Seats Class A common stock to be determined by reference to the table below, based on the redemption date and the “fair market value” of shares of Vivid Seats Class A common stock (as defined below) except as otherwise described below;

- if, and only if, the closing price of the shares of Vivid Seats Class A common stock equals or exceeds \$10.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a Vivid Seats Public IPO Warrant as described under the heading “— Vivid Seats PubCo IPO Exchange Warrants — Public — Anti-Dilution Adjustments”) for any 20 trading days within the 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the holders of Vivid Seats Public IPO Warrants; and
- if the closing price of the shares of Vivid Seats Class A common stock for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which we send the notice of redemption to the holders of Vivid Seats Public IPO Warrants is less than \$18.00 per share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Vivid Seats PubCo IPO Exchange Warrants — Public — Anti-Dilution Adjustments”), the Vivid Seats Private Placement IPO Warrants must also be concurrently called for redemption on the same terms as the outstanding Vivid Seats Public IPO Warrants, as described above.

Beginning on the date the notice of redemption is given until the Vivid Seats Public IPO Warrants are redeemed or exercised, holders may elect to exercise their Vivid Seats Public IPO Warrants on a cashless basis. The numbers in the table below represent the number of shares of Vivid Seats Class A common stock that holders of Vivid Seats Public IPO Warrants will receive upon such cashless exercise in connection with a redemption by us pursuant to this redemption feature, based on the “fair market value” of the shares of Vivid Seats Class A common stock on the corresponding redemption date (assuming holders elect to exercise their Vivid Seats Public IPO Warrants and such Vivid Seats Public IPO Warrants are not redeemed for \$0.10 per Vivid Seats Public IPO Warrant), determined for these purposes based on the volume weighted average price of the shares of Vivid Seats Class A common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of Vivid Seats Public IPO Warrants, and the number of months that the corresponding redemption date precedes the expiration date of the Vivid Seats Public IPO Warrants, each as set forth in the table below. We will provide our holders of Vivid Seats Public IPO Warrants with the final fair market value no later than one business day after the 10-trading day period described above ends.

Pursuant to the Existing Warrant Agreement, references above to shares of Vivid Seats Class A common stock shall include a security other than shares of Vivid Seats Class A common stock into which the shares of Vivid Seats Class A common stock have been converted or exchanged for in the event we are not the surviving company in the business combination. The numbers in the table below will not be adjusted when determining the number of such securities to issue upon exercise of the Vivid Seats Public IPO Warrants if we are not the surviving entity following the business combination.

The share prices set forth in the column headings of the table below will be adjusted as of any date on which the number of shares issuable upon exercise of a Vivid Seats Public IPO Warrant or the exercise price of a Vivid Seats Public IPO Warrant is adjusted as set forth under the heading “— Anti-Dilution Adjustments” below.

If the number of shares issuable upon exercise of a Vivid Seats Public IPO Warrant is adjusted, the adjusted share prices in the column headings will equal the share prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the number of shares deliverable upon exercise of a Vivid Seats Public IPO Warrant immediately prior to such adjustment and the denominator of which is the number of shares deliverable upon exercise of a Vivid Seats Public IPO Warrant as so adjusted. The number of shares in the table below shall be adjusted in the same manner and at the same time as the number of shares issuable upon exercise of a Vivid Seats Public IPO Warrant. If the exercise price of a Vivid Seats Public IPO Warrant is adjusted, (a) in

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the case of an adjustment pursuant to the fifth paragraph under the heading “— Anti-Dilution Adjustments” below, the adjusted share prices in the column headings will equal the unadjusted share price multiplied by a fraction, the numerator of which is the higher of the Market Value and the Newly Issued Price as set forth under the heading “— Anti-Dilution Adjustments” and the denominator of which is \$10.00 and (b) in the case of an adjustment pursuant to the second paragraph under the heading “— Anti-Dilution Adjustments” below, the adjusted share prices in the column headings will equal the unadjusted share price less the decrease in the exercise price of a Vivid Seats Public IPO Warrant pursuant to such exercise price adjustment.

Redemption Date (period to expiration of warrants)	Fair Market Value of Class A Ordinary Common Stock								
	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	\$18.00
60 months	0.261	0.281	0.297	0.311	0.324	0.337	0.348	0.358	0.361
57 months	0.257	0.277	0.294	0.310	0.324	0.337	0.348	0.358	0.361
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.361
51 months	0.246	0.268	0.287	0.304	0.320	0.333	0.346	0.357	0.361
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.361
45 months	0.235	0.258	0.279	0.298	0.315	0.330	0.343	0.356	0.361
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.361
39 months	0.221	0.246	0.269	0.290	0.309	0.325	0.340	0.354	0.361
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.361
33 months	0.205	0.232	0.257	0.280	0.301	0.320	0.337	0.352	0.361
30 months	0.196	0.224	0.250	0.274	0.297	0.316	0.335	0.351	0.361
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.350	0.361
24 months	0.173	0.204	0.233	0.260	0.285	0.308	0.329	0.348	0.361
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.361
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.361
15 months	0.130	0.164	0.197	0.230	0.262	0.291	0.317	0.342	0.361
12 months	0.111	0.146	0.181	0.216	0.250	0.282	0.312	0.339	0.361
9 months	0.090	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.361
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.361
3 months	0.034	0.065	0.104	0.150	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

The exact fair market value and redemption date may not be set forth in the table above, in which case, if the fair market value is between two values in the table or the redemption date is between two redemption dates in the table, the number of shares of Vivid Seats Class A common stock to be issued for each Vivid Seats Public IPO Warrant exercised will be determined by a straight-line interpolation between the number of shares set forth for the higher and lower fair market values and the earlier and later redemption dates, as applicable, based on a 365 or 366-day year, as applicable. For example, if the volume weighted average price of the shares of Vivid Seats Class A common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the Vivid Seats Public IPO Warrants is \$11.00 per share, and at such time there are 57 months until the expiration of the Vivid Seats Public IPO Warrants, holders may choose to, in connection with this redemption feature, exercise their Vivid Seats Public IPO Warrants for 0.277 shares of Vivid Seats Class A common stock for each whole Vivid Seats Public IPO Warrant. For an example where the exact fair market value and redemption date are not as set forth in the table above, if the volume weighted average price of the shares of Vivid Seats Class A common stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the Vivid Seats Public IPO Warrants is \$13.50 per share, and at such time there are 38 months until the expiration of the Vivid Seats Public IPO Warrants, holders may choose to, in connection with this redemption feature, exercise their Vivid Seats Public IPO Warrants for 0.298 shares of Vivid Seats Class A common stock for each whole Vivid Seats Public IPO Warrant. In no event will the Vivid Seats Public IPO Warrants be exercisable on a cashless basis in connection with this redemption feature for more than 0.361 shares of Vivid Seats Class A common stock per Vivid Seats Public IPO Warrant (subject to adjustment). Finally, as reflected in the table above, if the Vivid Seats



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Public IPO Warrants are out of the money and about to expire, they cannot be exercised on a cashless basis in connection with a redemption by us pursuant to this redemption feature, since they will not be exercisable for any shares of Vivid Seats Class A common stock.

This redemption feature differs from the typical warrant redemption features used in many other blank check offerings, which typically only provide for a redemption of warrants for cash (other than the private placement warrants) when the trading price for the underlying shares exceeds \$18.00 per share for a specified period of time. This redemption feature is structured to allow for all of the outstanding Vivid Seats Public IPO Warrants to be redeemed when the shares of Vivid Seats Class A common stock are trading at or above \$10.00 per share, which may be at a time when the trading price of the shares of Vivid Seats Class A common stock is below the exercise price of the Vivid Seats Public IPO Warrants. The redemption feature provides us with the flexibility to redeem the Vivid Seats Public IPO Warrants without them having to reach the \$18.00 per share threshold set forth above under “— Redemption of Vivid Seats Public IPO Warrants When the Price Per Shares of Vivid Seats Class A Common Stock Equals or Exceeds \$18.00.” Holders choosing to exercise their Vivid Seats Public IPO Warrants in connection with a redemption pursuant to this feature will, in effect, receive a number of shares for their Vivid Seats Public IPO Warrants based on an option pricing model with a fixed volatility input.

No fractional shares of Vivid Seats Class A common stock will be issued upon exercise. If, upon exercise, a holder would be entitled to receive a fractional interest in a share, we will round down to the nearest whole number of shares of Vivid Seats Class A common stock to be issued to the holder.

### *Redemption Procedures*

A holder of a Vivid Seats Public IPO Warrant may notify us in writing in the event it elects to be subject to a requirement that such holder will not have the right to exercise such warrant, to the extent that after giving effect to such exercise, such person (together with such person’s affiliates), to the warrant agent’s actual knowledge, would beneficially own in excess of 4.9% or 9.8% (or such other amount as specified by the holder) of the shares of Vivid Seats Class A common stock outstanding immediately after giving effect to such exercise.

### *Anti-Dilution Adjustments*

If the number of outstanding shares of Vivid Seats Class A common stock is increased by a share capitalization or share dividend payable in shares of Vivid Seats Class A common stock, or by a split-up of shares of Vivid Seats Class A common stock or other similar event, then, on the effective date of such share capitalization or share dividend, split-up or similar event, the number of shares of Vivid Seats Class A common stock issuable on exercise of each Vivid Seats Public IPO Warrant will be increased in proportion to such increase in the outstanding shares of Vivid Seats Class A common stock. A rights offering to holders of shares of Vivid Seats Class A common stock entitling holders to purchase shares of Vivid Seats Class A common stock at a price less than the “historical fair market value” (as defined below) will be deemed a share capitalization of a number of shares of Vivid Seats Class A common stock equal to the product of (i) the number of shares of Vivid Seats Class A common stock actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for shares of Vivid Seats Class A common stock) multiplied by (ii) one minus the quotient of (x) the price per share of Vivid Seats Class A common stock paid in such rights offering and divided by (y) the historical fair market value. For these purposes (i) if the rights offering is for securities convertible into or exercisable for shares of Vivid Seats Class A common stock, in determining the price payable for shares of Vivid Seats Class A common stock, there will be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (ii) “historical fair market value” means the volume weighted average price of shares of Vivid Seats Class A common stock during the 10-trading day period ending on the trading day prior to the first date on which the shares of Vivid Seats Class A common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights.

In addition, if we, at any time while the Vivid Seats Public IPO Warrants are outstanding and unexpired, pay a dividend or make a distribution in cash, securities or other assets to holders of shares of Vivid Seats Class A common stock on account of such shares of Vivid Seats Class A common stock (or other securities into which the Vivid Seats Public IPO Warrants are convertible), other than (a) as described above or (b) any cash dividends or cash distributions which, when combined on a per share basis with all other cash dividends and cash distributions paid on the shares of Vivid Seats Class A common stock during the 365-day period ending on the date of declaration of such dividend or distribution (as adjusted to appropriately reflect any other adjustments and excluding cash dividends or cash distributions that resulted in an adjustment to the exercise price or to the number of shares of Vivid Seats Class A common stock issuable on exercise of each warrant) does not exceed \$0.50, then the Vivid Seats Public IPO Warrant exercise price will be decreased, effective immediately after the effective date of such event, by the amount of cash and/or the fair market value of any securities or other assets paid on each share of Vivid Seats Class A common stock in respect of such event.

If the number of outstanding shares of Vivid Seats Class A common stock is decreased by a consolidation, combination, reverse share sub-division or reclassification of shares of Vivid Seats Class A common stock or other similar event, then, on the effective date of such consolidation, combination, reverse share sub-division, reclassification or similar event, the number of shares of Vivid Seats Class A common stock issuable on exercise of each Vivid Seats Public IPO Warrant will be decreased in proportion to such decrease in outstanding shares of Vivid Seats Class A common stock.

Whenever the number of shares of Vivid Seats Class A common stock purchasable upon the exercise of the Vivid Seats Public IPO Warrants is adjusted, as described above, the Vivid Seats Public IPO Warrant exercise price will be adjusted by multiplying the Vivid Seats Public IPO Warrant exercise price immediately prior to such adjustment by a fraction (x) the numerator of which will be the number of shares of Vivid Seats Class A common stock purchasable upon the exercise of the Vivid Seats Public IPO Warrants immediately prior to such adjustment, and (y) the denominator of which will be the number of shares of Vivid Seats Class A common stock so purchasable immediately thereafter.

In case of any reclassification or reorganization of the outstanding shares of Vivid Seats Class A common stock (other than those described above or that solely affects the par value of such shares of Vivid Seats Class A common stock), or in the case of any merger or consolidation of us with or into another corporation (other than a consolidation or merger in which we are the continuing corporation and that does not result in any reclassification or reorganization of our issued and outstanding shares of Vivid Seats Class A common stock), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of us as an entirety or substantially as an entirety in connection with which we are dissolved, the holders of the Vivid Seats Public IPO Warrants will thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Vivid Seats Public IPO Warrants and in lieu of the shares of Vivid Seats Class A common stock immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares of Vivid Seats Class A common stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the Vivid Seats Public IPO Warrants would have received if such holder had exercised their Vivid Seats Public IPO Warrants immediately prior to such event. However, if such holders were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets for which each Vivid Seats Public IPO Warrants will become exercisable will be deemed to be the weighted average of the kind and amount received per share by such holders in such consolidation or merger that affirmatively make such election, and if a tender, exchange or redemption offer has been made to and accepted by such holders (other than a tender, exchange or redemption offer made by the company in connection with redemption rights held by stockholders of the company as provided for in the company's amended and restated memorandum and articles of association or as a result of the redemption of shares of Vivid Seats Class A common stock by the company if a proposed business combination is presented to the stockholders of the company for approval) under circumstances in which, upon completion of such tender or exchange offer, the

maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the issued and outstanding shares of Vivid Seats Class A common stock, the holder of a Vivid Seats Public IPO Warrant will be entitled to receive the highest amount of cash, securities or other property to which such holder would actually have been entitled as a shareholder if such holder of a Vivid Seats Public IPO Warrant had exercised such warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the shares of Vivid Seats Class A common stock held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustment (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in the Existing Warrant Agreement. Additionally, if less than 70% of the consideration receivable by the holders of shares of Vivid Seats Class A common stock in such a transaction is payable in the form of in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the registered holder of the warrant properly exercises the warrant within thirty days following public disclosure of such transaction, the Vivid Seats Public IPO Warrant exercise price will be reduced as specified in the Existing Warrant Agreement based on the Black-Scholes Warrant Value (as defined in the Existing Warrant Agreement) of the Vivid Seats Public IPO Warrant. The purpose of such exercise price reduction is to provide additional value to holders of the Vivid Seats Public IPO Warrants when an extraordinary transaction occurs during the exercise period of the Vivid Seats Public IPO Warrants pursuant to which the holders of the Vivid Seats Public IPO Warrants otherwise do not receive the full potential value of the Vivid Seats Public IPO Warrants.

The Vivid Seats Public IPO Warrants will be governed by the warrant agreement between Continental Stock Transfer & Trust Company, as warrant agent, and Horizon. The Existing Warrant Agreement provides that the terms of the Vivid Seats Public IPO Warrants may be amended without the consent of any holder to cure any ambiguity or correct any mistake, including to conform the provisions of the Existing Warrant Agreement to the description of the terms of the Vivid Seats Public IPO Warrants and the Existing Warrant Agreement set forth in this prospectus related to Horizon's IPO, or defective provision, but requires the approval by the holders of at least 65% of the then outstanding Vivid Seats Public IPO Warrants to make any change that adversely affects the interests of the registered holders of Vivid Seats Public IPO Warrants and, solely with respect to any amendment to the terms of the Vivid Seats Private Placement IPO Warrants or any provision of the Existing Warrant Agreement with respect to the Vivid Seats Private Placement IPO Warrants, 65% of the then outstanding Vivid Seats Private Placement IPO Warrants. You should review a copy of the Existing Warrant Agreement, which will be filed as an exhibit to this proxy statement/prospectus/consent solicitation statement, for a complete description of the terms and conditions applicable to the Vivid Seats Public IPO Warrants.

The Vivid Seats Public IPO Warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the warrant agent, with the exercise form on the reverse side of the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price (or on a cashless basis, if applicable), by certified or official bank check payable to us, for the number of Vivid Seats Public IPO Warrants being exercised. The holders of the Vivid Seats Public IPO Warrants do not have the rights or privileges of holders of common stock and any voting rights until they exercise their Vivid Seats Public IPO Warrants and receive shares of Vivid Seats Class A common stock. After the issuance of shares of Vivid Seats Class A common stock upon exercise of the Vivid Seats Public IPO Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

#### ***Vivid Seats PubCo IPO Exchange Warrants – Private***

In connection with the business combination, each Horizon IPO Private Placement Warrant will be converted into a corresponding Vivid Seats Private Placement IPO Warrant.

Except as described below, the Vivid Seats Private Placement IPO Warrants have terms and provisions that are identical to those of the Vivid Seats Public IPO Warrants. The Vivid Seats Private Placement IPO Warrants (including the shares of Vivid Seats Class A common stock issuable upon exercise of such Vivid Seats Private Placement IPO Warrants) will not be transferable, assignable or salable until 30 days after the completion of the business combination (except, among other limited exceptions, to officers, directors and affiliates of Sponsor) and they will not be redeemable (except as described above under “—Redemption of Vivid Seats Public IPO Warrants When the Price Per Share of Vivid Seats Class A Common Stock Equals or Exceeds \$10.00”) so long as they are held by Sponsor, members of Sponsor or their permitted transferees. Sponsor or its permitted transferees will have the option to exercise the Vivid Seats Private Placement IPO Warrants on a cashless basis and have certain registration rights with respect to Vivid Seats Class A Common Stock. If the Vivid Seats Private Placement IPO Warrants are held by holders other than Sponsor or its permitted transferees, the Vivid Seats Private Placement IPO Warrants will be redeemable by us in all redemption scenarios and exercisable by the holders on the same basis as the Vivid Seats Public IPO Warrants.

Except as described above under “—Vivid Seats PubCo IPO Exchange Warrants – Public—Redemption of Vivid Seats Public IPO Warrants When the Price Per Share of Vivid Seats Class A Common Stock Equals or Exceeds \$10.00,” if holders of the Vivid Seats Private Placement IPO Warrants elect to exercise them on a cashless basis, they would pay the exercise price by surrendering his, her or its Vivid Seats Private Placement IPO Warrants for that number of shares of Vivid Seats Class A common stock equal to the quotient obtained by dividing (x) the product of the number of shares of Vivid Seats Class A common stock underlying the Vivid Seats Private Placement IPO Warrants, multiplied by the excess of the “sponsor exercise fair market value” (defined below) over the exercise price of the Vivid Seats Private Placement IPO Warrants by (y) the sponsor exercise fair market value. The “sponsor exercise fair market value” will mean the average reported closing price of the shares of Vivid Seats Class A common stock for the 10 trading days ending on the third trading day prior to the date on which the notice of Vivid Seats Private Placement IPO Warrant exercise is sent to the warrant agent.

#### ***Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants***

In connection with the business combination, Vivid Seats PubCo will issue the Vivid Seats PubCo \$10.00 Exercise Warrants and the Vivid Seats PubCo \$15.00 Exercise Warrants. The Vivid Seats PubCo \$10.00 Exercise Warrants and the Vivid Seats PubCo \$15.00 Exercise Warrants will have identical terms (other than with respect to exercise price) and will be issued pursuant to a warrant agreement between Vivid Seats PubCo and Continental Stock Transfer & Trust Company, substantially in the form of the Form of New Warrant Agreement.

The Form of New Warrant Agreement is substantially consistent with the Existing Warrant Agreement other than with respect to the following key terms:

- The Form of New Warrant Agreement excludes references to ownership through The Depository Trust Company;
- The Form of New Warrant Agreement reflects the fact that the Vivid Seats PubCo \$10.00 Exercise Warrants and Vivid Seats PubCo \$15.00 Exercise Warrants were not issued as part of a unit;
- The Form of New Warrant Agreement does not distinguish between “private” and “public” warrants;
- The Vivid Seats PubCo \$10.00 Exercise Warrants and the Vivid Seats PubCo \$15.00 Exercise Warrants terminate on the date that is ten years after the date of completion of the business combination;
- The Form of New Warrant Agreement does not provide for the redemption of the Vivid Seats PubCo \$10.00 Exercise Warrants or the Vivid Seats PubCo \$15.00 Exercise Warrants;
- The underlying value for purposes of warrant exercise makes reference to the last reported sale price;

- The Form of New Warrant Agreement excludes provisions contingent upon the consummation of the business combination; and
- The Form of New Warrant Agreement does not provide for cashless exercise at the Company's option.

### ***Vivid Seats PubCo Class B Warrants***

In connection with the business combination, Vivid Seats PubCo will issue the Vivid Seats PubCo Class B Warrants. Each Vivid Seats PubCo Class B Warrant is expected to exercise automatically upon the exercise of a corresponding Hoya Intermediate Warrant. The terms of the Hoya Intermediate Warrants are expected to have terms substantially consistent with the Vivid Seats PubCo \$10.00 Exercise Warrants and the Vivid Seats PubCo \$15.00 Exercise Warrants.

### **Choice of Forum**

The proposed Vivid Seats PubCo Amended and Restated Charter provides that, to the fullest extent permitted by law, and unless Vivid Seats PubCo consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Vivid Seats PubCo, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of Vivid Seats PubCo's directors, officers, employees or stockholders to Vivid Seats PubCo or its stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Vivid Seats PubCo Amended and Restated Charter or Vivid Seats PubCo Amended and Restated Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine. The Vivid Seats PubCo Amended and Restated Charter will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. There is uncertainty as to whether a court would enforce such a provision relating to causes of action arising under the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. The clauses described above will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

### **Anti-Takeover Effects of Provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws**

The provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws and of the DGCL summarized below may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that you might consider in your best interest, including an attempt that might result in your receipt of a premium over the market price for your shares of Vivid Seats Class A common stock.

The Vivid Seats PubCo Amended and Restated Charter and the Vivid Seats PubCo Amended and Restated Bylaws will contain certain provisions that are intended to enhance the likelihood of continuity and stability in the composition of the Vivid Seats PubCo Board and that may have the effect of delaying, deferring or preventing a future takeover or change in control of Vivid Seats PubCo unless such takeover or change in control is approved by the Vivid Seats PubCo Board.

These provisions include:

- *Action by Written Consent; Special Meetings of Stockholders.* The Vivid Seats PubCo Amended and Restated Charter will provide that, following the time Private Equity Owner and its affiliated companies cease to beneficially own in the aggregate fifty percent (50%) of the voting control of Vivid Seats PubCo, 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. The Vivid Seats PubCo Amended and Restated

Charter and the Vivid Seats PubCo Amended and Restated Bylaws will also provide that, subject to any special rights of the holders of any series of preferred stock and except as otherwise required by law, special meetings of stockholders of Vivid Seats PubCo may be called only (i) by or at the direction of the Vivid Seats Board or the chair of the Vivid Seats Board pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that Vivid Seats PubCo would have if there were no vacancies or (ii) prior to the date on which Private Equity Owner and its affiliated companies cease to beneficially own at least thirty percent (30%) of the voting control of Vivid Seats PubCo, by the chair of the Vivid Seats Board at the written request of the holders of a majority of the voting power of the then outstanding shares of voting stock in the manner provided for in the Vivid Seats PubCo Amended and Restated Bylaws.

- *Advance Notice Procedures.* The Vivid Seats PubCo Amended and Restated Bylaws will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of Vivid Seats PubCo's stockholders, and for stockholder nominations of persons for election to the board of directors to be brought before an annual or special meeting of stockholders. 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 Vivid Seats PubCo's Secretary timely written notice, in proper form, of the stockholder's intention to bring that business or nomination before the meeting. Although the Vivid Seats PubCo Amended and Restated Bylaws will not give the Vivid Seats PubCo Board the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, as applicable, the Vivid Seats PubCo Amended and Restated 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 Vivid Seats PubCo.
- *Authorized but Unissued Shares.* Vivid Seats PubCo's authorized but unissued shares of Vivid Seats Class A common stock and preferred stock will be available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of Vivid Seats Class A common stock and preferred stock could render more difficult or discourage an attempt to obtain control of a majority of Vivid Seats PubCo Class A common stock by means of a proxy contest, tender offer, merger or otherwise.
- *Business Combinations with Interested Stockholders.* The Vivid Seats PubCo Amended and Restated Charter will provide that Vivid Seats PubCo is not subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with an "interested stockholder" (which includes a person or group owning 15% or more of the corporation's voting stock) for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Accordingly, Vivid Seats PubCo is not subject to any anti-takeover effects of Section 203. Nevertheless, the Vivid Seats PubCo Amended and Restated Charter will contain provisions that will have a similar effect to Section 203, except that they will provide that Sponsor, Hoya Topco, and the Private Equity Owner, and their respective affiliates and successors and their direct and indirect transferees will not be deemed to be "interested stockholders," regardless of the percentage of Vivid Seats PubCo's voting stock owned by them, and accordingly will not be subject to such restrictions.
- *Director Designees; Classes of Directors.* Pursuant to the Vivid Seats PubCo Amended and Restated Charter, the directors of the Vivid Seats Board are divided into three classes, with each class serving staggered three year terms. The existence of a classified board of directors could discourage a third

party from making a tender offer or otherwise attempting to obtain control of Vivid Seats PubCo as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.

- *No Cumulative Voting for Directors.* The DGCL provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. The Vivid Seats PubCo Amended and Restated Charter does not provide for cumulative voting. As a result, the holders of shares of Vivid Seats PubCo common stock representing a majority of the voting power of all of the outstanding shares of capital stock of Vivid Seats PubCo will be able to elect all of the directors then standing for election.
- *Restriction on Issuance of Vivid Seats Class B Common Stock.* No shares of Vivid Seats Class B common stock may be issued by Vivid Seats PubCo except to a holder of Intermediate Common Units, such that after such issuance the holder of shares of Vivid Seats Class B common stock holds an identical number of Intermediate Common Units and shares of Vivid Seats Class B common stock. Following the Closing, the Intermediate Common Units will be held by Vivid Seats PubCo and Hoya Topco and such Intermediate Common Units will be subject to transfer restrictions set forth in the Second A&R LLCA. The restriction on issuance of Vivid Seats Class B common stock and the restriction on transfer of Intermediate Common Units could make it more difficult for a third party to obtain control of us from Hoya Topco, which will control our business policies and affairs and will control any action requiring the general approval of stockholders by virtue of its ownership of all outstanding Vivid Seats Class B common stock.

### **Limitations on Liability and Indemnification of Officers and Directors**

The Vivid Seats PubCo Amended and Restated Charter will limit the liability of the Vivid Seats PubCo directors to the fullest extent permitted by the DGCL and provides that Vivid Seats PubCo will provide them with customary indemnification and advancement of expenses. Vivid Seats PubCo expects to enter into customary indemnification agreements with each of its executive officers and directors that provide them, in general, with customary indemnification in connection with their service to Vivid Seats PubCo or on its behalf.

### **Corporate Opportunity**

The Vivid Seats PubCo Amended and Restated Charter will provide that, to the fullest extent permitted by law, (a) Vivid Seats PubCo renounces any interest or expectancy in a transaction or matter that may be a corporate opportunity for Vivid Seats PubCo and (b) the Private Equity Owner and/or its affiliated companies or Sponsor and/or its affiliates companies and/or their respective directors, members, managers and/or employees have no duty to present such corporate opportunity to Vivid Seats PubCo.

### **Transfer Agent and Registrar**

The transfer agent for Vivid Seats PubCo common stock will be Custom Stock Transfer & Trust Company.

### **Listing of Vivid Seats Class A Common Stock and Warrants**

Application will be made for the shares of Vivid Seats Class A common stock and Vivid Seats PubCo common warrants to be approved for listing on Nasdaq under the symbols "SEAT" and "SEAT WS" respectively.

## SECURITIES ACT RESTRICTIONS ON RESALE OF COMMON STOCK

### Rule 144

Pursuant to Rule 144 under the Securities Act (“Rule 144”), a person who has beneficially owned restricted common stock or warrants of Vivid Seats PubCo for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been one of Vivid Seats PubCo’s affiliates at the time of, or at any time during the three months preceding, a sale and (ii) Vivid Seats PubCo is subject to the Exchange Act periodic reporting requirements for at least three months before the sale and have filed all required reports under Section 13 or 15(d) of the Exchange Act during the 12 months (or such shorter period as Vivid Seats PubCo were required to file reports) preceding the sale.

Persons who have beneficially owned restricted common stock or warrants of Vivid Seats PubCo for at least six months but who are Vivid Seats PubCo’s affiliates at the time of, or at any time during the three months preceding, a sale would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of:

- 1% of the total number of shares of Vivid Seats PubCo common stock then outstanding; or
- the average weekly reported trading volume of Vivid Seats PubCo common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales by Vivid Seats PubCo’s affiliates under Rule 144 are also limited by manner of sale provisions and notice requirements and by the availability of current public information about us.



## BENEFICIAL OWNERSHIP OF SECURITIES

The following table sets forth information regarding (i) the actual beneficial ownership of Horizon's voting shares (prior to the business combination and PIPE Subscription) and (ii) the expected beneficial ownership of Vivid Seats PubCo's voting shares immediately following the Closing and PIPE Subscription (assuming a "no redemption" scenario and assuming a "full redemption" scenario as described below) by:

- each person who is known to be the beneficial owner of more than 5% of Horizon's voting shares;
- each of Horizon's current officers and directors;
- each person who is expected to be, following the business combination and PIPE Subscription, a beneficial owner of more than 5% of Vivid Seats PubCo common stock;
- each person who will become a named executive officer or director of Vivid Seats PubCo following the consummation of the business combination; and
- all executive officers and directors of Vivid Seats PubCo following the consummation of the business combination, as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days. A person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days, provided that any person who acquires any such right with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise of such right. Under these rules, more than one person may be deemed to be a beneficial owner of the same securities.

Horizon's authorized common stock currently consists of Horizon Class A ordinary shares and Horizon Class B ordinary shares. The beneficial ownership of Horizon's voting shares prior to the business combination and the PIPE Subscription is based on 54,398,433 shares of Horizon Class A ordinary shares and 13,599,608 shares of Horizon Class B ordinary shares (including founder shares) issued and outstanding in the aggregate. Following the Closing, Vivid Seats PubCo's authorized common stock will consist of Vivid Seats Class A common stock and Vivid Seats Class B common stock. See "Description of Vivid Seats PubCo Securities."

The expected beneficial ownership of shares of Vivid Seats PubCo's voting shares following the consummation of the business combination and the PIPE Subscription reflects the following:

- the consummation of the Exchange;
- each Horizon Class A ordinary share held by public investors in Horizon's IPO converts into one share of Vivid Seats Class A common stock; and
- Hoya Topco receives 118,200,000 shares of Vivid Seats Class B common stock pursuant to the Transaction Agreement;

and assumes two scenarios:

- a "no redemption" scenario where: no redemptions of redeemable Horizon Class A ordinary shares occur upon Closing and 22,500,000 shares of Vivid Seats Class A common stock are issued pursuant to the PIPE Subscription; and
- an "full redemption" scenario where: all redeemable Horizon Class A ordinary shares are redeemed at Closing and an aggregate of 60,427,800 shares of Vivid Seats Class A common stock are issued pursuant to the PIPE Subscription.

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Based on the foregoing assumptions, there would be 76,948,433 shares of Vivid Seats Class A common stock and 118,200,000 shares of Vivid Seats Class B common stock immediately following the consummation of the business combination in the “no redemption” scenario, and 76,948,433 shares of Vivid Seats Class A common stock and 118,200,000 shares of Vivid Seats Class B common stock issued and outstanding immediately following the consummation of the business combination in the “full redemption” scenario. If the actual facts are different from the foregoing assumptions, ownership figures reflected in the table that follows on a post-business combination basis will be different.

Unless otherwise indicated, Horizon and Vivid Seats believe that all persons named in the table below have sole voting and investment power with respect to all shares of voting shares beneficially owned by them. Unless otherwise noted, the business address of each of those listed in the table below pre-business combination is 600 Steamboat Road, Suite 200, Greenwich, CT 06830, and post-business combination is 111 N. Canal Street, Suite 800, Chicago, IL 60606.

Name and Address of Beneficial Owners	Prior to the Business Combination (Horizon)				After the Business Combination (Vivid Seats PubCo)							
					Assuming No Redemptions Scenario				Assuming Maximum Redemptions Scenario			
	Class A Ordinary Shares	%	Class B Ordinary Shares	%	Number of Class A shares of Common Stock	%	Number of Class B shares of Common Stock	%	Number of Class A shares of Common Stock	%	Number of Class B shares of Common Stock	%
<b>Five Percent Holders of Horizon</b>												
Integrated Core Strategies (US) LLC(1)												
Linden Capital LP(2)												
Horizon Sponsor, LLC												
<b>Directors and Executive Officers of Horizon</b>												
Todd L. Boehly(3)												
David Minella(4)												
Safwan Shah(4)												
Haroon Mokhtarzada(4)												
Michele Trogni(4)												
Robert Ott												
Kunal Arora												
All officers and directors as a group (seven individuals)												
<b>Five Percent Holders of Vivid Seats PubCo</b>												
<b>Following Business Combination:</b>												
Hoya TopCo, LLC(5)	—	—										
Horizon Sponsor, LLC	—	—										
Eldridge Industries, LLC												
<b>Directors and Executive Officers of Vivid Seats PubCo After Consummation of the Business Combination</b>												
Stanley Chia	—	—										
Lawrence Fey	—	—										
Jon Wagner	—	—										
Rival Bakal	—	—										
All officers and directors as a group ( individuals)	—	—										

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\* Denotes ownership of less than 1%.

- (1) With respect to ownership of Horizon, includes Class A ordinary shares beneficially held by Integrated Core Strategies (US) LLC, a Delaware limited liability company (“ICS”), Riverview Group LLC, a Delaware limited liability company (“RG”), ICS Opportunities, Ltd., a Cayman Islands exempted company (“ICSO”), Millennium International Management L.P., a Delaware limited partnership (“MIM”), Millennium Management LLC, a Delaware limited liability company (“MI”), Millennium Group Management LLC, a Delaware limited liability company (“MGM”), and Israel Englander, the managing member of Millennium Group Management and a United States citizen (“Mr. Englander”), based solely on the Schedule 13G filed jointly by ICS, RG, ICSO, MIM, MI, MGM, and Mr. Englander, with the SEC on February 5, 2021. The business address of each of ICS, RG, ICSO, MIM, MI, MGM, and Mr. Englander is 666 Fifth Avenue, New York, NY 10103.
- (2) With respect to ownership of Horizon, includes Class A shares beneficially owned by each of Linden Capital LP (“LC”), Linden GP LLC (“LGP”), Linden Advisors LP (“LA”) and Siu Min Wong (“Mr. Wong”) may be deemed the beneficial owner of 3,885,217 Shares. This amount consists of 3,548,022 Shares held by Linden Capital and 337,195 Shares held by separately managed accounts, based solely on the Schedule 13G/A filed jointly by Linden Capital LP LC, LGP, LA and Mr. Wong, with the SEC on February 8, 2021. The business address of LC is Victoria Place, 31 Victoria Street, Hamilton HM10 Bermuda. The business address of each of LGP, LA and Mr. Wong is 590 Madison Avenue, 15th Floor, New York, NY 10022.
- (3) With respect to Horizon, interests shown consist of Class A Shares held by Sponsor. Sponsor is indirectly controlled by Eldridge. Mr. Boehly is the indirect controlling member of Eldridge, and in such capacity, may be deemed to have voting and dispositive power with respect to the Shares. Eldridge is a private investment firm specializing in providing both equity and debt capital. Mr. Boehly is the Chairman, Chief Executive Officer and controlling member of Eldridge.
- (4) Does not include any shares indirectly owned by this individual as a result of his or her partnership interest in Sponsor or its affiliates.
- (5) The following table sets forth our directors’ and named executive officers’ direct and indirect beneficial ownership interests in Hoya Topco, LLC:

<u>Name of Beneficial Owner</u>	<u>Class B Units</u>	<u>Class B-1 Incentive Units</u>	<u>Class C Units (b)</u>	<u>Percentage of Class C Units Beneficially Owned</u>	<u>Class D Units</u>	<u>Class E Units</u>
Stanley Chia						
Lawrence Fey						
Jon Wagner						
Rival Bakal						
GTCR Entities(a)						
All officers and directors as a group ( individuals)						

- a) (collectively, the “GTCR Entities”) are members of Hoya Topco, LLC and my therefore be deemed to beneficially own the shares of Vivid Seats Class B common stock.
- b) The Class C Units are the voting securities of Hoya Topco, LLC.

## OFFICERS AND DIRECTORS OF VIVID SEATS PUBCO UPON CONSUMMATION OF THE BUSINESS COMBINATION

### Officers and Directors

Set forth below are the names, ages and positions of each of the individuals who will serve as directors and officers of Vivid Seats PubCo upon the Closing:

Name	Age	Position
Stanley Chia	39	Chief Executive Officer and Director Nominee
Lawrence Fey	40	Chief Financial Officer
Jon Wagner	48	Chief Technology Officer
Riva Bakal	37	Senior Vice President, Strategy and Product
		Director Nominee
		Director Nominee
		Director Nominee
		Director Nominee
		Director Nominee
		Director Nominee
		Director Nominee
		Director Nominee

**Stanley Chia.** Upon the Closing, Mr. Chia will serve as Chief Executive Officer of Vivid Seats PubCo and as a member of the Vivid Seats Board. Mr. Chia joined Vivid Seats as Chief Executive Officer in November 2018. In this role, Mr. Chia leads the efforts to further elevate Vivid Seats and its offerings to consumers and sellers of tickets, building on Vivid Seats' success as a leading marketplace with industry-pacing technology, track record of innovation and world-class experience for buying and selling live event tickets. Prior to joining Vivid Seats, Mr. Chia served as Chief Operating Officer from April 2015 to November 2018 at Grubhub Inc., an online and mobile food ordering and delivery marketplace. He has also held senior roles at Amazon.com, Inc., Cisco Systems, Inc., and General Electric Company, where he led strategic businesses and organizations. He also serves on the Board of Directors of 1871, as a member of the nominating and governance committee, and on the President's advisory board of the Georgia Institute of Technology. Mr. Chia received his bachelor's degree in Industrial Engineering from the Georgia Institute of Technology and his master of business administration degree from Emory University. Mr. Chia also served in the Singapore Armed Forces as an Armored Infantry Platoon Commander. Mr. Chia is well qualified to serve on the Vivid Seats Board because of his experience with Vivid Seats, including in his capacity as Chief Executive Officer, and his public company executive experience.

**Lawrence Fey.** Upon the Closing, Mr. Fey will serve as the Chief Financial Officer of Vivid Seats PubCo. Mr. Fey joined Vivid Seats as Chief Financial Officer in April 2020 and previously served as a member of its Board of Directors from July 2017 through February 2020. Mr. Fey has nearly 20 years of financial and investment experience, including most recently serving as a Managing Director of private equity firm GTCR where we worked from 2005 until he joined Vivid Seats in 2020. While at GTCR, Mr. Fey was a member of the Board of Directors across many successful investments, including Six3 Systems, CAMP Systems, Zayo Group, Cision, Park Place Technologies, GreatCall, Simpli.fi and EaglePicher. Mr. Fey received his bachelor's degree in Economics from Dartmouth College.

**Jon Wagner.** Upon the Closing, Mr. Wagner will serve as the Chief Technology Officer of Vivid Seats PubCo. Mr. Wagner joined Vivid Seats as Chief Technology Officer in December 2018. Mr. Wagner is responsible for overseeing software engineering, cloud and infrastructure engineering, data engineering, and IT teams at Vivid Seats. Mr. Wagner joined Vivid Seats with over 25 years of experience in the technology sector, including most recently serving as a freelance Decision Engineering Consultant from January 2018 to December 2018, where he provided systems engineering and decision engineering solutions to operations, financial and

logistics problems. Prior to that role, Mr. Wagner also served as Co-Founder of Aidan.ai, a start-up specializing in applied artificial intelligence, from June 2017 to January 2018, as Vice President of Systems & Decision Engineering at Grubhub from February 2017 to May 2017 and as Chief Operating Officer of Zoomer, a B2B food delivery company, from March 2015 to February 2017. He has also served in a number of roles across the e-commerce space, including as Chief Architect and Senior Vice President of eMoney Advisor, Chief Technology Officer of Gladstone Analytics and Vice President of Software Engineering at VerticalNet, Inc., a B2B supply management solutions company. Mr. Wagner received his bachelor's degree in Computer Science from La Salle University.

**Riva Bakal.** Upon the Closing, Ms. Bakal will serve as the Senior Vice President of Strategy and Product of Vivid Seats PubCo. Ms. Bakal has served as Senior Vice President of Strategy and Product of Vivid Seats since February 2021. In this role, Ms. Bakal leads strategy, corporate development, product management, user experience, resale and fulfillment teams. Prior to her current role, Ms. Bakal served as Vice President of Strategy and Corporate Development since she joined Vivid Seats in February 2019. Prior to joining Vivid Seats, Ms. Bakal held a variety of senior positions across functions at Grubhub from August 2016 to December 2018, most recently serving as Vice President of Market Operations. Ms. Bakal has worked in the technology sector for over 15 years and has experience in investment banking as well as a depth of e-commerce marketplace experience spanning industries including travel, online education and food delivery. Ms. Bakal received her bachelor's degree in Management Science from the Massachusetts Institute of Technology and her master of business administration degree from Harvard Business School.

## Corporate Governance

### *Composition of the Board of Directors*

The business and affairs of Vivid Seats PubCo will be managed under the direction of its board of directors. Following the Closing, the Vivid Seats Board will be chaired by \_\_\_\_\_, and include \_\_\_\_\_, of whom qualify as independent. Subject to the terms of the Stockholders' Agreement and the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws, the number of directors will be fixed by the Vivid Seats Board.

When considering whether directors and director nominees have the experience, qualifications, attributes and skills, taken as a whole, to enable the Vivid Seats Board to satisfy its oversight responsibilities effectively in light of its business and structure, the Vivid Seats Board expects to focus primarily on each person's background and experience as reflected in the information discussed in each of the directors' individual biographies set forth above in order to provide an appropriate mix of experience and skills relevant to the size and nature of its business.

In connection with the business combination, Vivid Seats PubCo, Sponsor and Hoya Topco will enter into the Stockholders' Agreement pursuant to which, among other things, the Topco Equityholders will be granted rights to designate five (5) directors for election to the Vivid Seats Board and the Horizon Equityholders will have the right to designate three (3) directors for election to the Vivid Seats Board. See "Business Combination Proposal — Related Agreements — Stockholders' Agreement."

After the Closing, under the terms of the Stockholders' Agreement, the Topco Equityholders will have the right to designate five (5) directors for election to the Vivid Seats Board and the Horizon Equityholders will have the right to designate three (3) directors for election to the Vivid Seats Board. From the Closing Date, the Horizon Equityholders will have the right to nominate (a) three (3) directors to the Vivid Seats Board, so long as the Horizon Equityholders, in the aggregate, beneficially own at least 12% of the aggregate number of shares of Vivid Seats PubCo common stock that are issued and outstanding on the Closing Date (the "Closing Amount"), of which at least two (2) will qualify as "independent directors" under applicable stock exchange regulations, (b) two (2) directors to the Vivid Seats Board, so long as the Horizon Equityholders, in the aggregate,

beneficially own at least 6% but less than 12% of the Closing Amount, each of which shall qualify as “independent directors” under applicable stock exchange regulations, and (c) until the date the Horizon Equityholders, in the aggregate, beneficially own a number of voting stock representing less than five percent (5%) of the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Horizon Equityholders on the Closing Date, one (1) directors to the Vivid Seats Board, who shall qualify as an “independent director” under applicable stock exchange regulations. From the Closing Date, the Topco Equityholders will have the right to nominate (i) five (5) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 24% of the Closing Amount, of which at least one (1) will qualify as an “independent director” under applicable stock exchange regulations, (ii) four (4) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 18% but less than 24% of the Closing Amount, (iii) three (3) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 12% but less than 18% of the Closing Amount, (iv) two (2) directors to the Vivid Seats Board, so long as the Topco Equityholders, in the aggregate, beneficially own at least 6% but less than 12% of the Closing Amount and (v) until the date the Topco Equityholders, in the aggregate, beneficially own a number of voting shares representing less than five percent (5%) off the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Topco Equityholders on the Closing Date, one (1) director to the Vivid Seats Board. No reduction in the number of directors that Topco Equityholders and Horizon Equityholders are entitled to designate pursuant to the foregoing two sentences shall shorten the term of any such designated director then-serving on the Vivid Seats Board. Additionally, once the Topco Equityholders, in the aggregate, beneficially own less than 40% of the aggregate number of shares of Vivid Seats PubCo common stock held, directly or indirectly, by the Topco Equityholders as of the Closing Date, none of the directors designated by the Topco Equityholders shall be required to qualify as “independent directors” under any stock exchange regulations. In the event the size of the Vivid Seats Board is increased in accordance with applicable law and Vivid Seats PubCo’s organizational documents, the Topco Equityholders shall have the right to designate a number of directors of the Vivid Seats Board which give the Topco Equityholders the same percentage of total directors on the Vivid Seats Board as permitted to be designated pursuant to foregoing, rounded up to the next whole number. See “Business Combination Proposal — Related Agreements — Stockholders’ Agreement — Board Composition; Chairperson of the Board.”

Any director designated by the Topco Equityholders or the Horizon Equityholders may resign at any time upon written notice to the Vivid Seats Board. The Topco Equityholders have the exclusive right to remove a director designated by the Topco Equityholders or to fill any vacancy created by a director designated by the Topco Equityholders. The Horizon Equityholders have the exclusive right to remove a director designated by the Horizon Equityholders or to fill any vacancy created by a director designated by the Horizon Equityholders. See “Business Combination Proposal — Related Agreements — Stockholders’ Agreement — Resignation; Removal; Vacancies.”

### ***Director Independence***

As a result of the Vivid Seats Class A common stock and warrants being listed on Nasdaq following the Closing, Vivid Seats PubCo will be required to comply with the applicable rules of Nasdaq in determining whether a director is independent. Prior to the completion of the business combination, the parties undertook a review of the independence of the individuals named above and have determined that each of \_\_\_\_\_ qualifies as “independent” as defined under the applicable Nasdaq rules.

### ***Controlled Company Exemption***

Upon the Closing, Private Equity Owner will beneficially own more than 50% of the combined voting power for the election of directors. As a result, Vivid Seats PubCo will be a “controlled company” within the meaning of the corporate governance standards of Nasdaq and may elect not to comply with certain corporate governance standards, including, but not limited to, the following requirements:

- that a majority of its board of directors consist of directors who qualify as “independent” as defined under Nasdaq rules;
- that it have a nominating and corporate governance committee and, if it has such a committee, that it is composed entirely of independent directors; and
- that it have a compensation committee and, if it has such a committee, that it is composed entirely of independent directors.

Immediately following the Closing, Vivid Seats PubCo may elect to utilize one or more of these exemptions for so long as it remains a “controlled company.” Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of these corporate governance requirements. In the event that Vivid Seats PubCo ceases to be a “controlled company” and the shares of Vivid Seats Class A common stock continue to be listed on Nasdaq, Vivid Seats PubCo will be required to comply with these provisions within the applicable transition periods. See “Risk Factors — Risks Related to Organizational Structure After the Business Combination — Following the Closing, we will be a “controlled company” within the meaning of the Nasdaq listing standards and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements”.

### ***Committees of the Board of Directors***

The Vivid Seats Board will direct the management of its business and affairs, as provided by Delaware law, and will conduct its business through meetings of the board of directors and standing committees. The Vivid Seats Board will have a standing audit committee, which will operate under a written charter, but expects that it will not initially have a compensation committee or a nominating and corporate governance committee, for so long as Vivid Seats PubCo remains a controlled company under Nasdaq rules. For so long as Vivid Seats PubCo does not have a compensation committee, Vivid Seats PubCo expects that its board of directors will approve compensation for its executive officers and will serve as the administrator under its incentive plans.

In addition, from time to time, special committees may be established under the direction of the Vivid Seats Board when the Vivid Seats Board deems it necessary or advisable to address specific issues. Following the business combination, current copies of Vivid Seats PubCo’s committee charters will be posted on its website, [www.vividseats.com](http://www.vividseats.com), as required by applicable SEC and Nasdaq rules. The information on or available through any of such website is not deemed incorporated in this proxy statement/prospectus/consent solicitation statement and does not form part of this proxy statement/prospectus/consent solicitation statement.

### ***Audit Committee***

The audit committee’s responsibilities will include, among other things:

- appointing, compensating, retaining, evaluating, terminating and overseeing Vivid Seats PubCo’s independent registered public accounting firm;
- discussing with Vivid Seats PubCo’s independent registered public accounting firm their independence from management;
- reviewing with Vivid Seats PubCo’s independent registered public accounting firm the scope and results of their audit;

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- approving all audit and permissible non-audit services to be performed by Vivid Seats PubCo's independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and Vivid Seats PubCo's independent registered public accounting firm the interim and annual financial statements that Vivid Seats PubCo files with the SEC;
- reviewing and monitoring Vivid Seats PubCo's accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; and
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters.

Upon the Closing, the audit committee will consist of . The parties have affirmatively determined that each expected member of the audit committee qualifies as independent under Nasdaq rules applicable to board members generally and under Nasdaq rules and Exchange Act Rule 10A-3 specific to audit committee members. All expected members of Vivid Seats PubCo's audit committee meet the requirements for financial literacy under the applicable Nasdaq rules. In addition, will qualify as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K.

### ***Code of Ethics***

Vivid Seats PubCo will have a code of ethics that applies to all of its executive officers, directors and employees, including its principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. The code of ethics will be available on Vivid Seats PubCo's website, [www.vividseats.com](http://www.vividseats.com). Vivid Seats PubCo intends to make any legally required disclosures regarding amendments to, or waivers of, provisions of its code of ethics on its website rather than by filing a Current Report on Form 8-K.

### ***Compensation Committee Interlocks and Insider Participation***

None of Vivid Seats PubCo's executive officers has, during the last year, participated in deliberations of its board of directors concerning executive officer compensation. None of Vivid Seats PubCo's executive officers currently serves, or has served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of the Vivid Seats Board.



## EXECUTIVE COMPENSATION

### Horizon

*Throughout this sub-section, unless otherwise noted, “we,” “us,” “our,” “the Company” and similar terms refer to Horizon prior to the Closing.*

None of our officers or directors have received any cash compensation for services rendered to us. Commencing on the date that our securities are first listed on the NYSE through the earlier of consummation of the business combination and our liquidation, we will pay our sponsor \$10,000 per month for office space, utilities, secretarial and administrative support services provided to members of our management team. In addition, our sponsor, officers and directors, or any of their respective affiliates will be reimbursed for any out-of-pocket expenses incurred in connection with activities on our behalf such as identifying potential target businesses and performing due diligence on suitable business combinations. Our audit committee will review on a quarterly basis all payments that were made by us to our sponsor, officers or directors, or our or their affiliates. Any such payments prior to an initial business combination will be made from funds held outside the trust account. Other than quarterly audit committee review of such reimbursements, we do not expect to have any additional controls in place governing our reimbursement payments to our directors and officers for their out-of-pocket expenses incurred in connection with our activities on our behalf in connection with identifying and consummating an initial business combination. Other than these payments and reimbursements, no compensation of any kind, including finder’s and consulting fees, will be paid by the company to our sponsor, officers and directors, or any of their respective affiliates, prior to completion of the business combination.

After the completion of the business combination, directors or members of our management team who remain with us may be paid consulting or management fees from the combined company. All of these fees will be fully disclosed to shareholders, to the extent then known, in the proxy solicitation materials or tender offer materials furnished to our shareholders in connection with a proposed initial business combination. We have not established any limit on the amount of such fees that may be paid by the combined company to our directors or members of management. It is unlikely the amount of such compensation will be known at the time of the proposed initial business combination, because the directors of the post-combination business will be responsible for determining executive officer and director compensation. Any compensation to be paid to our executive officers after the completion of the business combination will be determined, or recommended to the board of directors for determination, either by a compensation committee constituted solely by independent directors or by a majority of the independent directors on our board of directors.

We do not intend to take any action to ensure that members of our management team maintain their positions with us after the consummation of the business combination, although it is possible that some or all of our officers and directors may negotiate employment or consulting arrangements to remain with us after the business combination. The existence or terms of any such employment or consulting arrangements to retain their positions with us may influence our management’s motivation in identifying or selecting a target business but we do not believe that the ability of our management to remain with us after the consummation of the business combination will be a determining factor in our decision to proceed with any potential business combination. We are not party to any agreements with our officers and directors that provide for benefits upon termination of employment.

### Vivid Seats

*Throughout this sub-section, unless otherwise noted, “we,” “us,” “our,” “the Company” and similar terms refer to Vivid Seats prior to the Closing, and to Vivid Seats PubCo and its subsidiaries after the business combination.*

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This section discusses the material components of the executive compensation program for our executive officers who are named in the “Summary Compensation Table” below. In 2020, our “named executive officers” and their positions were as follows:

- Stanley Chia, Chief Executive Officer;
- Lawrence Fey, Chief Financial Officer; and
- Jon Wagner, Chief Technology Officer

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the completion of the business combination may differ materially from the currently planned programs summarized in this discussion.

### Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers for our fiscal year ended December 31, 2020.

Name and Principal Position	Year	Salary (\$)	Stock Awards\$(1)	Non-Equity Incentive Plan Compensation \$(2)	All Other Compensation (\$)	Total
Stanley Chia Chief Executive Officer	2020	551,539	1,042,105	275,769	26,906(3)	1,896,319
Lawrence Fey Chief Financial Officer	2020	192,692	483,973	48,173	6,877(4)	731,715
Jon Wagner Chief Technology Officer	2020	350,000	303,354	87,500	9,205(4)	750,059

- (1) Amounts reflect the full grant-date fair value of profits interests granted during 2020 computed in accordance with ASC Topic 718, rather than amounts paid to or realized by the named individual. We provide information regarding the assumptions used to calculate the value of all profits interests made to executive officers in Note 2 of the audited consolidated financial statements and the related notes of Hoya Intermediate included elsewhere in this proxy statement/prospectus/consent solicitation statement.
- (2) Annual incentive amounts paid in 2021 for the 2020 performance year were made under individual employment agreements and are reported in the “Non-Equity Incentive Plan Compensation” column. These amounts were paid to the named executive officers in 2021.
- (3) Amount reflects (a) YPO International Membership in the amount of \$17,906 in the year ended December 31, 2020, (b) standard 401(k) matching contributions in the amount of \$8,250 and (c) tax advisory services in the amount of \$750.
- (4) Amount reflects the Company’s standard 401(k) matching contributions.

### 2020 Salaries

The named executive officers receive a base salary to compensate them for services rendered to our company. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive’s skill set, experience, role and responsibilities. There were no changes to the named executive officers’ base salaries in 2020.

### 2020 Bonuses

In 2020, each of the named executive officers were eligible to receive an annual executive incentive bonus from the Company; the target bonus is set forth in their respective employment agreements, expressed as a

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percentage of annual base salary, as described below in “Executive Compensation Arrangements”. Actual bonus payments were determined by the Company on a discretionary basis based on the Company’s overall performance for the year, as well as each individual’s performance, subject to each named executive officer’s continued employment through the payment date.

### **Equity Compensation**

Equity-based awards for the Company’s named executive officers were granted in the form of (a) profits interests, which entitle the holder to a portion of the profits and appreciation in the equity value of Hoya Topco arising after the date of grant and (b) phantom equity, which represents a potential one-time lump sum payment of a portion of a transaction bonus pool of up to \$5,021,500. Such payments will be made within 30 days following the sale of Hoya Topco. On September 1, 2020, Messrs. Chia, Fey and Wagner were granted profits interests and phantom equity, each as set forth below.

The following table sets forth the profits interests granted to the Company’s named executive officers in the fiscal year ended December 31, 2020:

<u>Named Executive Officer</u>	<u>2020 Equity Granted<sup>(1)</sup></u> <u>(2)</u>
Stanley Chia	450,000 <sup>(3)</sup>
	450,000 <sup>(4)</sup>
Lawrence Fey	110,000 <sup>(3)</sup>
	110,000 <sup>(4)</sup>
	440,000 <sup>(3)</sup>
Jon Wagner	77,000 <sup>(3)</sup>
	77,000 <sup>(4)</sup>
	240,000 <sup>(3)</sup>

- (1) See the section entitled “Outstanding Equity Awards at Fiscal Year-End” for details of each profits interest grant and phantom equity grant.
- (2) The vesting of such profits interests and phantom equity occurs in 20% equal installments on each anniversary of the grant date, subject to the named executive officer’s continued employment through each vesting date.
- (3) Represents profits interests.
- (4) Represents phantom equity.

We intend to adopt a 2021 Incentive Award Plan, referred to below as the 2021 Plan, in order to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of our Company and certain of its affiliates and to enable our Company and certain of its affiliates to obtain and retain services of these individuals, which is essential to our long-term success. We expect that the 2021 Plan will be effective on the date on which it is adopted by our board of directors, subject to approval of such plan by our stockholders. For additional information about the 2021 Plan, please see the section entitled “2021 Incentive Award Plan” below.

### **Other Elements of Compensation**

#### **Retirement Plans**

We maintain a 401(k) retirement savings plan for our employees, including our named executive officers, who satisfy certain eligibility requirements. We expect that our named executive officers will be eligible to participate in the 401(k) plan on the same terms as other full-time employees. The Internal Revenue Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a pre-tax basis through

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contributions to the 401(k) plan. Currently, we match contributions made by participants in the 401(k) plan up to a specified percentage of the employee contributions, and these matching contributions are fully vested as of the date on which the contribution is made. We believe that providing a vehicle for tax-deferred retirement savings through our 401(k) plan, and making fully vested matching contributions, adds to the overall desirability of our executive compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies.

### ***Employee Benefits and Perquisites***

**Health/Welfare Plans.** All of our full-time employees, including our named executive officers, are eligible to participate in our health and welfare plans, including:

- medical, dental and vision benefits;
- medical and dependent care flexible spending accounts;
- short-term and long-term disability insurance; and
- life insurance.

We believe the perquisites described above are necessary and appropriate to provide a competitive compensation package to our named executive officers.

### ***No Tax Gross-Ups***

We do not make gross-up payments to cover our named executive officers' personal income taxes that may pertain to any of the compensation or perquisites paid or provided by our Company.

### **Outstanding Equity Awards at Fiscal Year-End**

The following table summarizes the number of shares or units underlying outstanding equity incentive plan awards for each named executive officer as of December 31, 2020.

<b>Name</b>	<b>Type of Equity</b>	<b>Grant Date</b>	<b>Number of Shares or Units of Stock That Have Not Vested (#)</b>	<b>Market Value of Shares or Units of Stock That Have Not Vested (\$) (5)</b>
Stanley Chia	Profits interests	11/5/2018	300,459(1)	\$ 1,320,000
	Phantom equity	9/1/2020	450,000(2)	\$ 842,105
	Profits interests	9/1/2020	450,000(2)	\$ 2,315,789
Lawrence Fey	Phantom equity	9/1/2020	110,000(3)	\$ 205,848
	Profits interests	9/1/2020	110,000(3)	\$ 566,082
	Profits interests	9/1/2020	440,000(3)	\$ 539,562
Jon Wagner	Profits interests	12/17/2018	54,000(4)	\$ 66,219
	Phantom equity	9/1/2020	77,000(3)	\$ 144,094
	Profits interests	9/1/2020	77,000(3)	\$ 396,257
	Profits interests	9/1/2020	240,000(3)	\$ 294,306

- (1) Vesting occurs in 20% equal installments on each anniversary of November 5, 2018, subject to Mr. Chia's continued employment through each vesting date. Upon certain qualifying terminations, (a) an additional 10% of unvested profits interests will accelerate and vest in connection with Mr. Chia's termination and (b) if a sale of Hoya Topco is consummated in the six-month period following Mr. Chia's termination, all of the unvested units will accelerate and vest.

- (2) Vesting occurs in 20% equal installments on each anniversary of June 30, 2020, subject to Mr. Chia's continued employment through each vesting date. Upon certain qualifying terminations, (a) an additional 10% of unvested profits interests will accelerate and vest in connection with Mr. Chia's termination and (b) if a sale of Hoya Topco is consummated in the six-month period following Mr. Chia's termination, all of the unvested units will accelerate and vest.
- (3) Vesting occurs in 20% equal installments on each anniversary of June 30, 2020, subject to the named executive officer's continued employment through each vesting date.
- (4) Vesting occurs in 20% equal installments on each anniversary of December 12, 2018, subject to the named executive officer's continued employment through each vesting date.
- (5) There is no public market for the profits interests. For purposes of this disclosure, the Company has valued the profits interests using a third-party valuation on a per-unit basis as of December 31, 2020. The amount reported above under the heading "Market Value of Shares or Units of Stock That Have Not Vested" reflects the intrinsic value of the profits interests as of December 31, 2020, based upon the terms of each individual's profits interests.

## **Executive Compensation Arrangements**

### **Stanley Chia, Chief Executive Officer**

On October 3, 2018, the Company entered into an employment agreement with Mr. Chia (the "Chia Employment Agreement"), providing for his position as Chief Executive Officer of the Company. Mr. Chia's employment with the company is at-will and either party may terminate the Chia Employment Agreement without notice. It is anticipated that in connection with the business combination, Mr. Chia will enter into an amended and restated employment agreement, which will be summarized in a later filing.

With respect to 2020, the Chia Employment Agreement provided that Mr. Chia was entitled to a base salary of \$600,000 per year, that Mr. Chia had the opportunity to earn an annual incentive bonus in an amount equal to up to one-hundred percent (100%) of his annual base salary, determined in the sole discretion of the Company's board of directors, and that Mr. Chia was also entitled to participate in the Company's health and welfare plans.

In addition, the Chia Employment Agreement provides that upon termination of Mr. Chia's employment by the Company without Cause (as defined below) or if Mr. Chia's resignation for Good Reason (as defined below), Mr. Chia will be entitled to receive, subject to his execution and non-revocation of a release of claims, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months and (ii) a prorated annual bonus for the year in which termination occurs.

"Cause" is defined in the Chia Employment Agreement generally as the following conduct of Mr. Chia: (i) a material failure by Mr. Chia to perform his responsibilities or duties to the Company under the Chia Employment Agreement or those other responsibilities or duties as reasonably requested from time to time by the Company's board of directors and consistent with the Chia Employment Agreement; (ii) Mr. Chia's engagement in illegal conduct or gross misconduct that has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company; (iii) Mr. Chia's commission or conviction of, or plea of guilty or *nolo contendere* to, a felony, a crime involving moral turpitude or any other act or omission that has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company; (iv) a material breach of Mr. Chia's duty of loyalty to the Company or Mr. Chia's material breach of the Company's written code of conduct and business ethics, in either case, that has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company or Mr. Chia's material breach of his restrictive covenants agreement or any other material written agreement between Mr. Chia and the Company; (v) dishonesty that has materially harmed or is reasonably likely to materially harm the Company; (vi) fraud, gross negligence or repetitive negligence committed without regard to corrective direction in the course of discharge of Mr. Chia's duties as an

employee; or (vii) excessive and unreasonable absences from Mr. Chia's duties for any reason (other than authorized leave or as a result of Mr. Chia's death or Disability (as defined in the Chia Employment Agreement)), *provided that*, as to clauses (i), (ii), (iv), (vi), or (vii), an event will only constitute Cause after written notice has been given by the Company's board of directors and has not been cured for a period of thirty (30) days after Mr. Chia receives notice from the Company's board of directors.

"Good Reason" is defined in the Chia Employment Agreement generally as the occurrence of any of the following events: (i) a material adverse change in Mr. Chia's title, position, duties or responsibilities with the Company, including, but not limited to, (x) any failure of the Company to maintain Mr. Chia's title, position, duties and responsibilities as the sole chief executive officer and most senior executive officer of the Company (y) Mr. Chia's failure to be elected or reelected to the Company's board of directors or any governing body of the Company or of Hoya Topco, or (z) any requirement that Mr. Chia report to anyone other than directly to the Company's board of directors, (ii) a reduction in then-current Base Salary or then current Annual Bonus by more than ten percent (10%) of either, (iii) the material breach by the Company of any agreement between Mr. Chia and the Company or Hoya Topco or (iv) a relocation of Mr. Chia's primary location of work more than thirty (30) miles from the Company's headquarters in Chicago, Illinois, provided, however, that in each case above, Mr. Chia must (a) first provide written notice to the Company of the existence of the Good Reason condition within thirty (30) days of the initial existence of such event specifying the basis for his belief that he is entitled to terminate his employment for Good Reason, (b) give the Company an opportunity to cure any of the foregoing within thirty (30) days following Mr. Chia's delivery to the Company of such written notice, and (c) actually resign Mr. Chia's employment within thirty (30) days following the expiration of the Company's thirty (30) day cure period.

Under the Chia Employment Agreement, Mr. Chia is subject to perpetual confidentiality, a non-compete provision during his employment and in the one-year period post termination, a non-solicitation of customers and employee provision during his employment and in the one-year period post termination and a perpetual mutual non-disparagement provision.

#### **Lawrence Fey, Chief Financial Officer**

On March 19, 2020, the Company entered into an employment agreement with Mr. Fey (the "Fey Employment Agreement"), providing for his position as Chief Financial Officer of the Company. Mr. Fey's employment with the Company is at-will and either party may terminate the Fey Employment Agreement without notice. It is anticipated that in connection with the business combination, Mr. Fey will enter into an amended and restated employment agreement, which will be summarized in a later filing.

With respect to 2020, the Fey Employment Agreement provided that Mr. Fey was entitled to a base salary of \$300,000 per year and that Mr. Fey was entitled to participate in the Company's health and welfare plans.

In addition, Mr. Fey is party to an employment and restrictive covenants agreement, pursuant to which he is subject to perpetual confidentiality, a non-compete provision during his employment and in the two-year period post termination, a non-solicitation of customers and employee provision during his employment and in the two-year period post termination and a perpetual non-disparagement provision in favor of the Company.

#### **Jon Wagner, Chief Technology Officer**

On December 4, 2018, the Company entered into an employment agreement with Mr. Wagner (the "Wagner Employment Agreement"), providing for his position as Chief Technology Officer of the Company. Mr. Wagner's employment with the Company is at-will and either party may terminate the Wagner Employment Agreement without notice.

The Wagner Employment Agreement provides that Mr. Wagner is entitled to a base salary of \$350,000 per year. Mr. Wagner has the opportunity to earn an annual incentive bonus in an amount equal to up to fifty

percent (50%) of his annual base salary, determined in the sole discretion of the Company's board of directors. Mr. Wagner is currently not entitled to any severance payments. Mr. Wagner is also entitled to participate in the Company's health and welfare plans.

In addition, Mr. Wagner party to an employment and restrictive covenants agreement, pursuant to which he is subject to perpetual confidentiality, a non-compete provision during his employment and in the two-year period post termination, a non-solicitation of customers and employee provision during his employment and in the two-year period post termination and a perpetual non-disparagement provision in favor of the Company.

### **Director Compensation**

None of our directors for our fiscal year ended December 31, 2020 or any prior fiscal years have received any compensation for their services. In connection with the consummation of the business combination, we will implement a policy pursuant to which each independent non-employee director will receive an annual director fee of \$ as well as an additional annual fee of \$ for service as our chairman, \$ for service as the chair of our audit committee and an additional annual fee of \$ for service (including as chair) on our audit committee, each earned on a quarterly basis. Each director will also receive an annual equity award with a grant date value of \$ which will vest in full on the date of our annual shareholder meeting immediately following the date of grant, subject to the nonemployee director continuing in service through such meeting date. The award is further subject to accelerated vesting upon a change in control (as defined in the 2021 Plan).

### ***Equity Compensation***

#### ***Profits Interests and Phantom Equity***

The outstanding long-term incentives held by our named executive officers consist of profits interests and phantom equity granted pursuant to the limited liability company agreement of Hoya Topco, as amended from time to time, and individual award agreements. The profits interests and phantom equity are designed to align employees' interests with the interests of Hoya Topco, and its subsidiaries, and represent interests in the future profits (once a certain level of proceeds has been generated) in Hoya Topco. The phantom equity represents a potential one-time lump sum payment in connection with a sale of Hoya Topco.

In general, awards of profits interests and phantom equity vest ratably over five years from June 30, 2020, subject to continued employment through each vesting date. Upon the occurrence of a Change of Control, the outstanding unvested profits interests shall become fully vested and non-forfeitable, and the phantom equity shall be entitled to a payment under a transaction bonus pool. In addition, upon a sale of Hoya Topco, the acquirer may reasonably request that the holder of profits interests continue to provide services at compensation no less favorable in the aggregate than the compensation earned by such holder prior to the sale. Certain portions of the proceeds received from the profits interests may be forfeited in certain circumstances following such sale that is contingent upon whether the holder provides such services.

The profits interests and phantom equity will remain outstanding following consummation of the business combination, and will generally remain subject to, the same terms and conditions.

### ***2021 Incentive Award Plan***

We intend to adopt a 2021 Incentive Award Plan, to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of our Company and certain of its affiliates to enable our Company and certain affiliates to obtain and retain services of these individuals, which are essential to our long-term success. We expect the 2021 Plan to be effective on the date it is adopted by the Vivid Seats Board, subject to approval of such plan by our stockholders.

## CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS

### Horizon

On July 2, 2020, Sponsor paid \$25,000 to cover for certain expenses on behalf of Horizon in exchange for the issuance of an aggregate of 14,375,000 Horizon Class B ordinary shares or approximately \$0.002 per share. Such securities were issued in connection with Horizon's formation and were exempt from registration.

On August 25, 2020, Horizon consummated an initial public offering (the "initial public offering") of 50,000,000 units, at an offering price of \$10.00 per unit and a private placement with Sponsor of 5,933,333 Horizon IPO Private Placement Warrants at a price of \$1.50 per warrant. \$500.0 million of net proceeds from the initial public offering and a concurrent private placement were placed in the Trust Account with Continental Stock Transfer & Trust Company acting as trustee.

On August 26, 2020, Horizon issued an additional 4,398,433 units (the "Over-Allotment Units") pursuant to the partial exercise by the underwriters of the Over-Allotment in connection with the initial public offering. The Over-Allotment Units were priced at \$10.00 per unit, generating total gross proceeds of \$43,984,330. Concurrently, Sponsor also purchased an additional 586,458 Horizon IPO Private Placement Warrants for \$879,687. Of the proceeds received from the consummation of the initial public offering, the private placement purchases by Sponsor and the sale of the Over-Allotment Units, \$543,984,330 was deposited in the Trust Account.

Horizon currently leases office space at 600 Steamboat Road, Suite 200, Greenwich, CT 06830 as its executive offices. Horizon pays Sponsor \$10,000 per month for office space, utilities, secretarial and administrative support services provided to members of its management team. Upon completion of its initial business combination or liquidation, Horizon will cease paying these monthly fees. Sponsor, to date, has waived the monthly fee.

No compensation of any kind, including finder's and consulting fees, will be paid by Horizon to Sponsor, officers and directors, or any of their respective affiliates, for services rendered prior to or in connection with the completion of the initial business combination. However, these individuals will be reimbursed for any out-of-pocket expenses incurred in connection with activities on Horizon's behalf such as identifying potential target businesses and performing due diligence on suitable business combinations. Horizon's audit committee will review on a quarterly basis all payments that were made by Horizon to Sponsor, officers, directors or Horizon's or their affiliates.

In addition, in order to fund working capital deficiencies or finance transaction costs in connection with an intended initial business combination, Sponsor or an affiliate of Sponsor or certain of Horizon's officers and directors may, but are not obligated to, loan to Horizon funds as may be required on a non-interest basis. If Horizon completes the initial business combination, it may repay such loaned amounts out of the proceeds of the Trust Account released to it. In the event that the initial business combination does not close, Horizon may use a portion of the working capital held outside the Trust Account to repay such loaned amounts but no proceeds from the Trust Account would be used for such repayment. Up to \$1,500,000 of such loans may be convertible into warrants of the post business combination entity at a price of \$1.50 per warrant at the option of the lender. Such warrants would be identical to the Horizon IPO Private Placement Warrants. Except as set forth above, the terms of such loans, if any, have not been determined and no written agreements exist with respect to such loans. Prior to the completion of the initial business combination, Horizon does not expect to seek loans from parties other than Sponsor or an affiliate of Sponsor as Horizon does not believe third parties will be willing to loan such funds and provide a waiver against any and all rights to seek access to funds in the Trust Account.

Any of the foregoing payments to Sponsor, repayments of loans from Sponsor or repayments of working capital loans prior to the initial business combination will be made using funds held outside the Trust Account.



### ***Registration Rights Agreement***

At the Closing, Vivid Seats PubCo, the Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement, dated as of August 25, 2020, by and between Horizon and the Sponsor. Pursuant to the Registration Rights Agreement, Vivid Seats PubCo will agree to file a registration statement for a shelf registration on Form S-1 or Form S-3 within 30 days following Closing and the Sponsor and Hoya Topco will be granted certain customary registration rights with respect to the securities of Vivid Seats PubCo. For more information about the Registration Rights Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Registration Rights Agreement.”

### ***Sponsor Agreement***

On April 21, 2021, Horizon entered into the Sponsor Agreement with Sponsor, Horizon and Hoya Topco. Pursuant to the Sponsor Agreement, among other things, Sponsor agreed to vote in favor of the Transaction Agreement and the business combination, in each case, subject to the terms and conditions contemplated by the Sponsor Agreement. For more information about the Sponsor Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Sponsor Agreement.”

### ***PIPE Subscription Agreements***

In connection with the execution of the Transaction Agreement, Horizon and Vivid Seats PubCo entered into the Subscription Agreements with the PIPE Investors, pursuant to which the PIPE Investors have agreed to subscribe for and purchase, an aggregate of 22,500,000 shares of Vivid Seats Class A common stock, in a private placement for a purchase price of \$10.00 per share, for aggregate gross proceeds of \$225.0 million. In the event that redemptions of Horizon Class A ordinary shares reduce the Transaction Proceeds to an amount below \$769.0 million, the Sponsor shall increase its commitment to the PIPE Subscription by a corresponding amount (the “Sponsor Backstop Commitment”). In consideration for the Sponsor Backstop Commitment, Hoya Intermediate shall pay the Sponsor \$11.7 million in cash at Closing.

The closing of the PIPE Subscription is contingent upon, among other things, the substantially concurrent consummation of the business combination. The Subscription Agreements provide that Vivid Seats PubCo will grant the investors in the PIPE Subscription certain customary registration rights. Vivid Seats PubCo will, within 30 days after the consummation of the business combination, file with the SEC a registration statement registering the resale of such shares of Vivid Seats Class A common stock and will use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. For more information about the Subscription Agreements, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — PIPE Subscription Agreements.”

### ***Engagement Letters***

On March 14, 2021, Horizon entered into an engagement letter (the “PIPE Engagement Letter”) with Credit Suisse Securities (USA) LLC (“Credit Suisse”) and Evercore Group L.L.C. (“Evercore”), pursuant to which Credit Suisse and Evercore will act as placement agents (in such capacities, the “Placement Agents”) in connection with the PIPE Subscription. The aggregate fees payable to Credit Suisse pursuant to the PIPE Engagement Letter, the Advisors Engagement Letter and as a portion of the Deferred Discount (as defined the underwriting agreement) that are contingent on completion of the business combination are approximately \$8.4 million.

On April 21, 2021, Horizon entered into an engagement letter (the “Advisors Engagement Letter”) with Credit Suisse and Deutsche Bank Securities Inc. (“Deutsche Bank” and, together with Credit Suisse, the “Advisors”). Pursuant to the Advisors Engagement Letter, Credit Suisse and Deutsche Bank will act as Horizon’s financial and equity capital markets advisors and will perform customary services for Horizon in connection with the business combination. Pursuant to the Advisors Engagement Letter, upon consummation of the business combination, Horizon and the Advisors shall agree on a mutually acceptable transaction fee.

On May 4, 2021, Vivid Seats entered into an engagement letter with Citigroup Global Markets Inc. (“Citi”), pursuant to which Citi will act as a financial advisor to Vivid Seats in connection with the business combination (the “Citi Engagement Letter”). Pursuant to the Citi Engagement Letter, upon consummation of the business combination, Vivid Seats will owe Citi an advisory fee of \$1,000,000. Citi was not involved in the negotiation of the business combination or valuation discussions related thereto.

On May 20, 2021, Horizon entered into an engagement letter with D.A. Davidson & Co. (“D.A. Davidson”), pursuant to which D.A. Davidson will render financial advisory and investment banking services to Horizon in connection with the business combination (the “Davidson Engagement Letter”). Pursuant to the Davidson Engagement Letter, upon consummation of the business combination, Horizon will owe D.A. Davidson a cash advisory fee of \$400,000 (which shall be a portion of the Deferred Discount (as defined in the underwriting agreement)).

On May 24, 2021, Horizon entered into an engagement letter with William Blair & Company, L.L.C. (“Blair”), pursuant to which Blair will act as a capital markets advisor to Horizon in connection with the business combination (the “Blair Engagement Letter”). Pursuant to the Blair Engagement Letter, upon consummation of the business combination, Horizon will owe Blair an advisory fee of \$1,500,000 (which shall be a portion of the Deferred Discount).

## **Vivid Seats**

### ***Stockholders’ Agreement***

At the Closing, Vivid Seats PubCo will enter into the Stockholders’ Agreement with Sponsor and Hoya Topco, pursuant to which, among other things, Private Equity Owner will be granted certain rights to designate directors for election to the Vivid Seats Board (and the voting parties will vote in favor of such designees). For more information about the Stockholders’ Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Stockholders’ Agreement.”

### ***Registration Rights Agreement***

At the Closing, Vivid Seats PubCo, the Sponsor and Hoya Topco will amend and restate the Registration and Shareholder Rights Agreement, dated as of August 25, 2020, by and between Horizon and the Sponsor. Pursuant to the Registration Rights Agreement, Vivid Seats PubCo will agree to file a registration statement for a shelf registration on Form S-1 or Form S-3 within 30 days following Closing and the Sponsor and Hoya Topco will be granted certain customary registration rights with respect to the securities of Vivid Seats PubCo. For more information about the Registration Rights Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Registration Rights Agreement.”

### ***Tax Receivable Agreement***

At the Closing, Vivid Seats PubCo will enter into the Tax Receivable Agreement with Hoya Intermediate, the TRA Holder Representative, Hoya Topco and the other TRA Holders that will provide for the payment by Vivid Seats PubCo to Hoya Topco and the other TRA Holders of 85% of the amount of certain tax benefits, if any, that Vivid Seats PubCo and certain of its subsidiaries actually realizes, or in some circumstances is deemed to realize, as a result of the various transactions occurring in connection with the Closing or in the future that are described above, including benefits arising from tax basis adjustments and certain other tax benefits attributable to payments made under the Tax Receivable Agreement. For more information about the Tax Receivable Agreement, see the section entitled “Proposal No. 1 — The Business Combination Proposal — Related Agreements — Tax Receivable Agreement.”

## **Policies and Procedures for Related Person Transactions**

Effective upon the consummation of the business combination, the Vivid Seats Board will adopt a written related person transaction policy that will set forth the following policies and procedures for the review and approval or ratification of related person transactions.

A “related person transaction” is a transaction, arrangement or relationship in which Vivid Seats PubCo or any of its subsidiaries was, is or will be a participant, the amount of which involved exceeds \$120,000, and in which any related person had, has or will have a direct or indirect material interest. A “related person” means:

- any person who is, or at any time during the applicable period was, one of Vivid Seats PubCo’s executive officers or one of Vivid Seats PubCo’s directors;
- any person who is known by Vivid Seats PubCo to be the beneficial owner of more than 5% of Vivid Seats PubCo’s voting shares;
- any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, executive officer or a beneficial owner of more than 5% of Vivid Seats PubCo’s voting shares, and any person (other than a tenant or employee) sharing the household of such director, executive officer or beneficial owner of more than 5% of Vivid Seats PubCo’s voting shares; and
- any firm, corporation or other entity in which any of the foregoing persons is a partner or principal, or in a similar position, or in which such person has a 10% or greater beneficial ownership interest.

Vivid Seats PubCo will have policies and procedures designed to minimize potential conflicts of interest arising from any dealings it may have with its affiliates and to provide appropriate procedures for the disclosure of any real or potential conflicts of interest that may exist from time to time. Specifically, pursuant to Vivid Seats PubCo’s audit committee charter, the audit committee will have the responsibility to review related party transactions.

COMPARISON OF CORPORATE GOVERNANCE AND STOCKHOLDERS’ RIGHTS

General

Horizon is incorporated under the laws of the Cayman Islands and the rights of Horizon are governed by the laws of the Cayman Islands, including the CICA, and Horizon’s amended and restated memorandum and articles of association (the “Existing Organizational Documents”). As a result of the Merger, Horizon shareholders who receive shares of Vivid Seats Class A common stock will become Vivid Seats PubCo stockholders. Vivid Seats PubCo is incorporated under the laws of the State of Delaware and the rights of Vivid Seats PubCo stockholders are governed by the laws of the State of Delaware, including the DGCL, and, following the business combination, by the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws, copies of which are attached to this proxy statement/prospectus/consent solicitation statement as *Annex C* and *Annex D*, respectively. Thus, following the Merger, the rights of Horizon shareholders who become Vivid Seats PubCo stockholders in the Merger will become governed by Delaware law, and will no longer be governed by Horizon’s Existing Organizational Documents but instead will be governed by the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws.

Comparison of Corporate Governance and Stockholders’ Rights

Set forth below is a summary comparison of material differences between the rights of Horizon shareholders under Horizon’s Existing Organizational Documents (left column) and the rights of Vivid Seats PubCo’s stockholders under the Vivid Seats PubCo Amended and Restated Charter, the Vivid Seats PubCo Amended and Restated Bylaws and the Stockholders’ Agreement (right column). The summary set forth below is not intended to be complete or to provide a comprehensive discussion of each company’s governing documents. This summary is qualified in its entirety by reference to the full text of Horizon’s Existing Organizational Documents, which are attached as Exhibit 3.1 of the registration statement of which this proxy statement/prospectus/consent solicitation statement forms a part, and the Vivid Seats PubCo Amended and Restated Charter, the Vivid Seats PubCo Amended and Restated Bylaws and the Stockholders’ Agreement, which are attached as *Annex C*, *Annex D* and *Annex E*, respectively, as well as the relevant provisions of the DGCL.

Horizon	Vivid Seats PubCo
Authorized Capital Stock	
The Existing Organizational Documents authorize share capital of \$44,100 divided into 400,000,000 of Horizon Class A ordinary shares of a par value of \$0.0001 each, 40,000,000 of Horizon Class B ordinary shares of a par value of \$0.0001 each and 1,000,000 preference shares of a par value of \$0.0001 each.	Vivid Seats PubCo will be authorized to issue 500,000,000 shares of Vivid Seats Class A common stock, par value \$0.0001 per share, 250,000,000 shares of Vivid Seats Class B common stock, par value \$0.0001 per share and 50,000,000 shares of preferred stock, par value \$0.0001 per share.  After giving effect to the business combination and based on the number of Horizon ordinary shares outstanding as of the record date, Vivid Seats PubCo will have approximately                      shares of Vivid Seats Class A common stock outstanding (assuming no redemptions),                      shares of Vivid Seats Class B common stock outstanding and no shares of preferred stock issued and outstanding.

**Rights of Preferred Stock**

The Existing Organizational Documents authorize the issuance of 1,000,000 preference shares with such designation, rights and preferences as may be determined from time to time by Horizon’s board of directors. Accordingly, Horizon’s board of directors is empowered under the Existing Organizational Documents, without shareholder approval, to issue preferred shares with dividend, liquidation, redemption, voting or other rights which could adversely affect the voting power or other rights of the holders of Horizon ordinary shares.

The Vivid Seats Board will be authorized, subject to limitations prescribed by law and the Vivid Seats PubCo Amended and Restated Charter, to determine the terms and conditions of the preferred stock, including whether the shares of preferred stock will be issued in one or more series, the number of shares to be included in each series and the powers (including the voting power), designations, preferences and relative, participating, optional or other special rights of the shares. The Vivid Seats Board also will be authorized to designate any qualifications, limitations or restrictions on the shares without any further vote or action by the stockholders. Subject to the rights of the holders of any series of preferred stock, the number of authorized shares of preferred stock may be increased or decreased (but not below the number of shares of preferred stock then outstanding) by the approval of the Vivid Seats Board and by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of Vivid Seats PubCo entitled to vote generally in an election of directors, without the separate vote of the holders of the preferred stock as a class.

**Number and Qualification of Directors**

The Existing Organizational Documents provide that Horizon shall have a board of directors consisting of not less than one person.

The Vivid Seats Board will initially consist of nine directors and thereafter, the number shall be fixed from time to time exclusively by resolution of the Vivid Seats Board.

**Classification of the Board of Directors**

The Existing Organizational Documents provide that Horizon’s board of directors shall be divided into three classes: Class I, Class II and Class III. The number of directors in each class shall be as nearly equal as possible, and further that the Class I directors shall stand elected for a term expiring at Horizon’s first annual general meeting, the Class II Directors shall stand elected for a term expiring at Horizon’s second annual general meeting and the Class III Directors shall stand elected for a term expiring at Horizon’s third annual general meeting. Commencing at Horizon’s first annual general meeting, and at each annual general meeting thereafter, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual general meeting after their election. All directors shall hold office until the expiration of their respective terms of office and until their successors shall have been elected and qualified.

The Vivid Seats Board will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. The term of office of the initial Class I directors shall expire at the 2022 annual meeting of stockholders, the term of office of the initial Class II directors shall expire at the 2023 annual meeting of stockholders and the term of office of the initial Class III directors shall expire at the 2024 annual meeting of stockholders. Each director shall hold office until the annual meeting of stockholders for the year in which such director’s term expires and a successor is duly elected and qualified or until his or her earlier death, resignation or removal.

**Removal of Directors**

The Existing Organizational Documents provide that prior to the closing of a business combination, Horizon may by ordinary resolution of the holders of the Horizon Class B ordinary shares appoint any person to be a director or may by ordinary resolution of the holders of the Horizon Class B ordinary shares remove any director. For the avoidance of doubt, prior to the closing of a business combination, holders of Horizon Class A ordinary shares shall have no right to vote on the appointment or removal of any director.

Subject to the rights of holders of any series of outstanding preferred stock and except as otherwise set forth in the Stockholders’ Agreement, directors may be removed with or without cause, (i) prior to the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of the voting stock of Vivid Seats PubCo, by the affirmative vote of stockholders representing at least a majority in voting power of the then outstanding shares of capital stock of Vivid Seats PubCo entitled to vote generally in an election of directors, voting together as a single class, and (ii) from and after the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of the voting stock of Vivid Seats PubCo, by the affirmative vote of stockholders representing at least sixty-six and two-thirds percent (66⅔%) of the voting power of the outstanding shares of capital stock of Vivid Seats PubCo entitled to vote generally in an election of directors, voting together as a single class, at a meeting of Vivid Seats PubCo’s stockholders called for that purpose. Pursuant to the Stockholders’ Agreement, Private Equity Owner and its controlled funds have the exclusive right to remove a director designated by Private Equity Owner and its controlled funds and Sponsor and its controlled funds have the exclusive right to remove a director designated by Sponsor and its controlled funds.

**Voting**

The Existing Organizational Documents provide that holder of Horizon Class A ordinary shares and Horizon Class B ordinary shares will vote together as a single class on all matters submitted to the shareholders for their vote or approval, except as required by applicable law or the Existing Organizational Documents, and that shareholders are entitled to one vote per share on all matters submitted to the shareholders for their vote or approval.

Holders of Vivid Seats Class A common stock and Vivid Seats Class B common stock will vote together as a single class on all matters submitted to the stockholders for their vote or approval, except as required by applicable law or the Vivid Seats PubCo Amended and Restated Charter. Holders of Vivid Seats Class A common stock and Vivid Seats Class B common stock are entitled to one vote per share on all matters submitted to the stockholders for their vote or approval.

**Cumulative Voting**

The Existing Organizational Documents do not provide for cumulative voting rights.

Holders of Vivid Seats PubCo’s common stock will not have cumulative voting rights.

**Vacancies on the Board of Directors**

The Existing Organizational Documents provide that the directors may appoint any person to be a director, either to fill a vacancy or as an additional director provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the amended and restated articles of association as the maximum number of directors. Except as the CICA or other applicable law may otherwise require, in the interim between annual general meetings or extraordinary general meetings called for the election of directors and/or the removal of one or more directors and the filling of any vacancy in that connection, additional directors and any vacancies in the board of directors, including unfilled vacancies resulting from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum (as defined in the amended and restated articles of association), or by the sole remaining director.

Subject to the rights of the holders of any series of preferred stock then outstanding and subject to the Stockholders’ Agreement, newly created directorships in the Vivid Seats Board resulting from any increase in the authorized number of directors or any vacancies in the Vivid Seats Board resulting from death, resignation, disqualification, removal from office or any other cause may be filled only by resolution of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected or appointed to fill a vacancy shall serve for the unexpired term of his or her predecessor in office and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. A director elected or appointed 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 elected or appointed and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. No decrease in the number of directors shall shorten the term of any director then in office. Pursuant to the Stockholders’ Agreement, Private Equity Owner and its controlled funds have the exclusive right to fill any vacancy created by a director designated by Private Equity Owner and its controlled funds and Sponsor and its controlled funds has the exclusive right to fill any vacancy created by a director designated by Sponsor and its controlled funds.

**Special Meeting of the Board of Directors**

The Existing Organizational Documents provide that a director may, or other officer on the direction of a director shall, call a meeting of the directors by at least two days’ notice in writing to every director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the directors either at, before or after the meeting is held.

Special meetings of the Vivid Seats Board may be called (i) by the Chair of the Vivid Seats Board, if any, (ii) by the Secretary upon the written request of a majority of the directors then in office or (iii) if the Vivid Seats Board then includes a director nominated or designated for nomination by Private Equity Owner, by any director nominated or designated for nomination by Private Equity Owner, or (iv) if the Vivid Seats Board then includes a director nominated or designated for nomination by Sponsor, by any director nominated or designated by Sponsor, and in each case shall be held at the place, if any, on the date and at the time as he, she or they shall fix.

### **Stockholder Action by Written Consent**

The Existing Organizational Documents provide that a resolution (including a special resolution) in writing (in one or more counterparts) signed by or on behalf of all of the members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorized representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of Horizon duly convened and held.

Prior to the first date on which Private Equity Owner and its affiliated companies cease to beneficially own in the aggregate fifty percent (50%) of the voting control of Vivid Seats PubCo, any action which is required or permitted to be taken by Vivid Seats PubCo's stockholders may be taken by a consent or consents in writing signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. From and after the date on which Private Equity Owner and its affiliated companies cease to beneficially own in the aggregate fifty percent (50%) of the voting control of Vivid Seats PubCo, any action which is required or permitted to be taken by Vivid Seats PubCo's stockholders may only be taken at a duly called annual meeting or special meeting.

### **Amendment to Certificate of Incorporation**

The Existing Organizational Documents provide that subject to the provisions of the CICA, the provisions of the amended and restated articles of association as regards the matters to be dealt with by ordinary resolution and Article 29.4, Horizon may by special resolution: (a) change its name; (b) alter or add to the amended and restated articles of association; (c) alter or add to the amended and restated memorandum of association with respect to any objects, powers or other matters specified therein; and (d) reduce its share capital or any capital redemption reserve fund.

Subject to the rights of holders of any series of outstanding preferred stock, and in addition to any affirmative vote of the holders of any particular class or series of the capital stock required by law or otherwise, no provision of ARTICLE FIVE (Board of Directors), ARTICLE SIX (Limitation of Liability), ARTICLE SEVEN (Written Consent; Special Meetings of Stockholders), ARTICLE NINE (Anti-Takeover; Interested Stockholder Transactions), ARTICLE TEN (Amendments) or ARTICLE ELEVEN (Exclusive Forum; Notice) of the Vivid Seats PubCo Amended and Restated Charter may be altered, amended or repealed in any respect, nor may any provision of the Vivid Seats PubCo Amended and Restated Charter or the Vivid Seats PubCo Amended and Restated Bylaws inconsistent therewith be adopted, unless, (i) prior to the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of voting stock of Vivid Seats PubCo, such alteration, amendment, repeal or adoption is approved by the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of voting stock of Vivid Seats PubCo, voting together as a single class, and (ii) from and after the date on which Private Equity Owner,



Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of voting stock of Vivid Seats PubCo, such alteration, amendment, repeal or adoption is approved by the affirmative vote of holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of the then outstanding shares of voting stock of Vivid Seats PubCo, voting together as a single class. Notwithstanding anything to the contrary in the Vivid Seats PubCo Amended and Restated Charter, subject to the rights of holders of any series of outstanding preferred stock, and in addition to any vote required by law, the affirmative vote of the holders of at least eighty (80%) of the voting power of Vivid Seats PubCo, voting together as a single class, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with ARTICLE EIGHT (Corporate Opportunities) of the Vivid Seats PubCo Amended and Restated Charter.

#### **Amendment of Bylaws**

A Cayman Islands exempted company does not have bylaws.

Subject to the rights of holders of any series of outstanding preferred stock, prior to the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of voting stock of Vivid Seats PubCo, the Vivid Seats PubCo Amended and Restated Bylaws may be amended by (i) the Vivid Seats Board or (ii) the stockholders by, in addition to any vote of the holders of any class or series of the capital stock of Vivid Seats PubCo required by the Vivid Seats PubCo Amended and Restated Charter and any other vote otherwise required by applicable law, the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of Vivid Seats PubCo. After the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of voting stock of Vivid Seats PubCo, the Vivid Seats PubCo Amended and Restated Bylaws may be amended by (i) the Vivid Seats Board or (ii) by the stockholders by, in addition to any vote of the holders of any class or series of the capital stock of Vivid Seats PubCo required by the Vivid Seats PubCo Amended and Restated Charter and any other vote otherwise required by applicable law, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of the then outstanding shares of voting stock of Vivid Seats PubCo, voting together as a single class.

## Quorum

*Stockholders.* The holders of a majority of the shares being individuals present in person or by proxy or if a corporation or other non-natural person by its duly authorized representative or proxy shall be a quorum.

*Board of Directors.* The quorum for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be a majority of the directors then in office.

*Stockholders.* The holders of a majority in voting power of the outstanding capital stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise required by applicable law, the Vivid Seats PubCo Amended and Restated Charter or the Vivid Seats PubCo Amended and Restated Bylaws.

*Board of Directors.* At all meetings of the Vivid Seats Board, a majority of the directors then in office shall constitute a quorum for the transaction of business; provided, however, that a quorum shall never be less than one-third the total number of directors.

## Special Stockholder Meetings

The directors, the chief executive officer or the chairman of the board of directors may call general meetings, and, for the avoidance of doubt, members shall not have the ability to call general meetings.

Subject to the rights of the holders of any series of outstanding preferred stock and to the requirements of applicable law, special meetings of stockholders of Vivid Seats PubCo may be called only (i) by or at the direction of the Vivid Seats Board or the Chair of the Vivid Seats Board pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that Vivid Seats PubCo would have if there were no vacancies, or (ii) prior to the date on which Private Equity Owner, Hoya Topco and their affiliated companies cease to beneficially own in the aggregate at least 30% of voting stock of Vivid Seats PubCo, by the Chair of the Vivid Seats Board at the written request of the holders of a majority of the voting power of the then outstanding shares of voting stock of Vivid Seats PubCo in the manner provided for in the Vivid Seats PubCo Amended and Restated Bylaws. Any business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of the meeting.

## **Notice of Stockholder Meetings**

At least five clear days' notice shall be given of any general meeting. Every notice shall specify the place, the day and the hour of the meeting and the general nature of the business to be conducted at the general meeting.

The notice of any meeting of stockholders shall be sent or otherwise given in accordance with the Vivid Seats PubCo Amended and Restated Bylaws not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided in the Vivid Seats PubCo Amended and Restated Bylaws or required by law or the Vivid Seats PubCo Amended and Restated Charter. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

## **Stockholder Proposals (Other than Nomination of Persons for Election as Directors)**

Members seeking to bring business before the annual general meeting or to nominate candidates for appointment as directors at the annual general meeting must deliver notice to the principal executive offices of Horizon not less than 120 calendar days before the date of Horizon's proxy statement released to members in connection with the previous year's annual general meeting or, if Horizon did not hold an annual general meeting the previous year, or if the date of the current year's annual general meeting has been changed by more than 30 days from the date of the previous year's annual general meeting, then the deadline shall be set by the directors with such deadline being a reasonable time before Horizon begins to print and send its related proxy materials.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in a notice of meeting given by or at the direction of the Vivid Seats Board or any duly authorized committee thereof, (b) if not specified in a notice of meeting, otherwise brought before the meeting by the Vivid Seats Board or any duly authorized committee thereof, or (c) otherwise properly brought before the meeting by a stockholder present in person who (1) was a Vivid Seats PubCo stockholder at the time of giving required notice, on the record date for determination of stockholders entitled to vote at the meeting and at the time of the meeting, (2) at the time of the meeting, is entitled to vote at the meeting and (3) has complied with notice procedures set forth in the Vivid Seats PubCo Amended and Restated Bylaws.

### **Stockholder Nominations of Persons for Election as Directors**

Members seeking to bring business before the annual general meeting or to nominate candidates for appointment as directors at the annual general meeting must deliver notice to the principal executive offices of Horizon not less than 120 calendar days before the date of the Horizon's proxy statement released to members in connection with the previous year's annual general meeting or, if Horizon did not hold an annual general meeting the previous year, or if the date of the current year's annual general meeting has been changed by more than 30 days from the date of the previous year's annual general meeting, then the deadline shall be set by the directors with such deadline being a reasonable time before Horizon begins to print and send its related proxy materials.

Nominations of any person for election to the Vivid Seats Board at an annual meeting may be made at such meeting only (a) by or at the direction of the Vivid Seats Board, including by any duly authorized committee thereof, or (b) by a stockholder of Vivid Seats PubCo who (1) was a stockholder of record at the time of giving required notice, on the record date for determination of stockholders entitled to vote at the meeting and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with notice procedures set forth in the Vivid Seats PubCo Amended and Restated Bylaws.

### **Limitation of Liability of Directors and Officers**

The Existing Organizational Documents do no limit the liability of the directors.

The Vivid Seats PubCo Amended and Restated Charter will limit the liability of the Vivid Seats PubCo directors to the fullest extent permitted by the DGCL.

### **Indemnification of Directors, Officers, Employees and Agents**

Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of directors and officers, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against the consequences of committing a crime, or against the indemnified person's own actual fraud, willful deceit, or dishonesty. The Existing Organizational Documents contain such an indemnity.

The Vivid Seats PubCo Amended and Restated Bylaws provides that Vivid Seats PubCo will provide the Vivid Seats PubCo directors customary indemnification and advancement of expenses. Vivid Seats PubCo expects to enter into customary indemnification agreements with each of its executive officers and directors that provide them, in general, with customary indemnification in connection with their service to Vivid Seats PubCo or on its behalf.

### **Dividends**

The Existing Organizational Documents provide that the directors may resolve to pay dividends and other distributions on shares in issue and authorize payment of the dividends or other distributions out of the funds of Horizon lawfully available therefor, and that except as otherwise provided by the rights attached to any shares, all dividends and other distributions shall be paid according to the par value of the shares that a member holds.

The holders of Vivid Seats Class A common stock are entitled to receive dividends, as and if declared by the Vivid Seats Board out of the assets of Vivid Seats PubCo that are by law available for such use. Dividends shall not be declared or paid on the Vivid Seats Class B common stock.

## **Liquidation**

The Existing Organizational Documents provide that if Horizon shall be wound up, the liquidator shall apply the assets of Horizon in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. Subject to the rights attaching to any shares, in a winding up: (a) if the assets available for distribution amongst the members shall be insufficient to repay the whole of Horizon's issued share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the par value of the shares held by them; or (b) if the assets available for distribution amongst the members shall be more than sufficient to repay the whole of Horizon's issued share capital at the commencement of the winding up, the surplus shall be distributed amongst the members in proportion to the par value of the shares held by them at the commencement of the winding up subject to a deduction from those shares in respect of which there are monies due, of all monies payable to Horizon for unpaid calls or otherwise.

Upon Vivid Seats PubCo's liquidation, dissolution or winding up of the affairs of Vivid Seats PubCo, after payment or provision for payment of the debts and other liabilities of Vivid Seats PubCo as required by law 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 Vivid Seats Class A common stock will be entitled to receive the remaining assets of Vivid Seats PubCo available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Vivid Seats Class B common stock shall not be entitled to receive any assets of Vivid Seats PubCo in the event of any such liquidation, dissolution or winding up of the affairs of Vivid Seats PubCo.

## **Anti-Takeover Provisions and other Stockholder Protections**

The Existing Organizational Documents contain provisions that may discourage unsolicited takeover proposals that shareholders may consider to be in their best interests. These provisions include a staggered board of directors and the ability of the board of directors to designate the terms of and issue new series of preference shares, which may make the removal of management more difficult and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for Horizon's securities.

The provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws and of the DGCL may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that you might consider in your best interest, including an attempt that might result in your receipt of a premium over the market price for your shares of Vivid Seats Class A common stock. See "Description of Vivid Seats PubCo Securities — Anti-Takeover Effects of Provisions of the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws" for a description of the relevant provisions in the Vivid Seats PubCo Amended and Restated Charter and Vivid Seats PubCo Amended and Restated Bylaws.

## Choice of Forum

The Existing Organizational Documents do not contain a choice of forum.

The proposed Vivid Seats PubCo Amended and Restated Charter provides that, to the fullest extent permitted by law, and unless Vivid Seats PubCo consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of Vivid Seats PubCo, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of Vivid Seats PubCo's directors, officers, employees or stockholders to Vivid Seats PubCo or its stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Vivid Seats PubCo Amended and Restated Charter or Vivid Seats PubCo Amended and Restated Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine. The Vivid Seats PubCo Amended and Restated Charter will further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. There is uncertainty as to whether a court would enforce such a provision relating to causes of action arising under the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. The clauses described above will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

## NO APPRAISAL RIGHTS

Appraisal or dissenter rights are statutory rights under the laws of the Cayman Islands that enable shareholders who object to certain extraordinary transactions to demand that the corporation pay such shareholders the fair value of their shares instead of receiving the consideration offered to shareholders in connection with the extraordinary transaction. However, appraisal rights or dissenter are not available in all circumstances. Appraisal rights are not available to Horizon's shareholders or warrant holders in connection with the business combination. Holder of public shares should consult their Cayman Islands legal counsel regarding their rights under the CICA.

## STOCKHOLDER PROPOSALS AND NOMINATIONS

### Stockholder Proposals

The Vivid Seats PubCo Amended and Restated Bylaws establish an advance notice procedure for stockholders who wish to present a proposal before an annual meeting for stockholders. The Vivid Seats PubCo Amended and Restated Bylaws provide that the only business that may be conducted at an annual meeting of stockholders is business that is (i) specified in a notice of meeting given by or at the direction of the Vivid Seats Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by the Vivid Seats Board or the chairperson of the meeting or (iii) is otherwise properly brought before such meeting by a stockholder who is a stockholder of record on the date of giving of the notice and at the time of the annual meeting, is entitled to vote at the meeting and has otherwise complied with the notice procedures specified in the Vivid Seats PubCo Amended and Restated Bylaws. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of Vivid Seats PubCo not less than 90 days nor more than 120 days prior to the one-year anniversary of the preceding year's annual meeting (which, in the case of the first annual meeting of stockholders following the closing of the business combination, the preceding year's annual meeting date is deemed under the Vivid Seats PubCo Amended and Restated Bylaws to be ); provided, however, that if the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 10<sup>th</sup> day following the day on which public disclosure of the date of such annual meeting was first made or the date which is 90 days prior to the date of the annual meeting, whichever is later.

Accordingly, for Vivid Seats PubCo's 2022 annual meeting, notice of a nomination or proposal must be delivered to Vivid Seats PubCo no later than , 2022. Nominations and proposals also must satisfy other requirements set forth in the Vivid Seats PubCo Amended and Restated Bylaws.

### Stockholder Director Nominees

The Vivid Seats PubCo Amended and Restated Bylaws permit stockholders to nominate directors for election at an annual meeting of stockholders, subject to the terms and conditions of the Stockholders' Agreement. To nominate a director, the stockholder must provide the information required by the Vivid Seats PubCo Amended and Restated Bylaws. In addition, the stockholder must give timely notice to Vivid Seats PubCo's secretary in accordance with the Vivid Seats PubCo Amended and Restated Bylaws, which, in general, require that the notice be received Vivid Seats PubCo's secretary within the time periods described above under "— Stockholder Proposals" for stockholder proposals.

## SHAREHOLDER COMMUNICATIONS

Shareholders and interested parties may communicate with Horizon's board of directors, any committee chairperson or the non-management directors as a group by writing to the board or committee chairperson in care

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of Horizon Acquisition Corporation, 600 Steamboat Road, Suite 200, Greenwich, CT 06830. Following the Closing, such communications should be sent to Vivid Seats Inc., 111 N. Canal Street, Suite 800, Chicago, IL 60606. Each communication will be forwarded, depending on the subject matter, to the board of directors, the appropriate committee chairperson or all non-management directors.

### **HOUSEHOLDING INFORMATION**

Unless Horizon has received contrary instructions, Horizon may send a single copy of this proxy statement/prospectus to any household at which two or more shareholders reside if the shareholders at that address have consented. This process, known as “householding,” reduces the volume of duplicate information received at any one household and helps to reduce Horizon’s expenses. However, if shareholders prefer to receive multiple sets of Horizon’s disclosure documents at the same address this year or in future years, the stockholders should follow the instructions described below. Similarly, if an address is shared with another shareholder and together both of the shareholders would like to receive only a single set of Horizon’s disclosure documents, the shareholders should follow these instructions:

- If the shares are registered in the name of the shareholder, the shareholder should contact Horizon at its offices at Horizon Acquisition Corporation, 600 Steamboat Road, Suite 200, Greenwich, CT 06830 to inform Horizon of his or her request; or
- If a bank, broker or other nominee holds the share, the shareholder should contact the bank, broker or other nominee directly.

### **LEGAL MATTERS**

Latham & Watkins LLP has passed upon the validity of the Vivid Seats Class A common stock and warrants offered by this proxy statement/prospectus/consent solicitation statement and certain other legal matters related to this proxy statement/prospectus/consent solicitation statement.

### **EXPERTS**

The financial statements of Horizon Acquisition Corporation as of December 31, 2020 and for the period from June 12, 2020 (inception) through December 31, 2020 appearing in this proxy statement/prospectus/consent solicitation statement have been audited by WithumSmith+Brown, PC, an independent registered public accounting firm, as set forth in their report thereon, appearing elsewhere in this proxy statement/prospectus/consent solicitation statement, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The balance sheet of Vivid Seats Inc. as of March 29, 2021, included in this proxy statement/prospectus/consent solicitation statement, has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such balance sheet is included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The financial statements of Hoya Intermediate, LLC as of December 31, 2020 and 2019, and for the years ended December 31, 2020 and 2019, included in this proxy statement/prospectus/consent solicitation statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

### **SUBMISSION OF STOCKHOLDER PROPOSALS**

Horizon’s board of directors is aware of no other matter that may be brought before the extraordinary general meeting.



## WHERE YOU CAN FIND ADDITIONAL INFORMATION

Horizon files reports, proxy statements and other information with the SEC as required by the Exchange Act. You can read Horizon's SEC filings, including this proxy statement/prospectus/consent solicitation statement, over the Internet at the SEC's website at <http://www.sec.gov>.

If you would like additional copies of this proxy statement/prospectus/consent solicitation statement or if you have questions about the business combination or the Proposals to be presented at the extraordinary general meeting, you should contact Horizon's proxy solicitation agent at the following address and telephone number:

Telephone: \_\_\_\_\_  
(banks and brokers call collect at \_\_\_\_\_)  
Email: \_\_\_\_\_

**If you are a Horizon shareholder and would like to request documents, please do so by \_\_\_\_\_, 2021, in order to receive them before the extraordinary general meeting.** If you request any documents from Horizon, Horizon will mail them to you by first class mail, or another equally prompt means.

All information contained in this proxy statement/prospectus/consent solicitation statement relating to Horizon has been supplied by Horizon, and all such information relating to Vivid Seats has been supplied by Vivid Seats. Information provided by either Horizon or Vivid Seats does not constitute any representation, estimate or projection of any other party.

This document is a proxy statement/prospectus/consent solicitation statement of Horizon for the extraordinary general meeting. Horizon has not authorized anyone to give any information or make any representation about the business combination, Horizon or Vivid Seats that is different from, or in addition to, that contained in this proxy statement/prospectus/consent solicitation statement. Therefore, if anyone does give you information of this sort, you should not rely on it. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.

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**HORIZON ACQUISITION CORPORATION**  
**CONDENSED BALANCE SHEETS**  
**MARCH 31, 2021 AND DECEMBER 31, 2020**

	<u>March 31, 2021</u> (unaudited)	<u>December 31,</u> 2020
<b>Assets</b>		
Current assets:		
Cash	\$ 798,715	\$ 941,474
Prepaid expenses	277,285	333,528
<b>Total current assets</b>	<b>1,076,000</b>	<b>1,275,002</b>
Investments held in Trust Account	544,010,831	544,002,795
<b>Total Assets</b>	<b>\$ 545,086,831</b>	<b>\$ 545,277,797</b>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 22,850	\$ 103,824
Accrued expenses	1,185,119	340,625
<b>Total current liabilities</b>	<b>1,207,969</b>	<b>444,449</b>
Derivative warrant liabilities	27,117,860	35,746,280
Deferred underwriting commissions	13,614,452	13,614,452
<b>Total liabilities</b>	<b>41,940,281</b>	<b>49,805,181</b>
<b>Commitments and Contingencies (Note 6)</b>		
Class A ordinary shares; 49,814,654 and 49,047,261 shares subject to possible redemption at \$10.00 per share as of March 31, 2021 and December 31, 2020, respectively	498,146,540	490,472,610
<b>Shareholders' Equity:</b>		
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued and outstanding	—	—
Class A ordinary shares, \$0.0001 par value; 400,000,000 shares authorized; 4,583,779 and 5,351,172 shares issued and outstanding (excluding 49,814,654 and 49,047,261 shares subject to possible redemption) as of March 31, 2021 and December 31, 2020, respectively	458	535
Class B ordinary shares, \$0.0001 par value; 40,000,000 shares authorized; 13,599,608 shares issued and outstanding as of March 31, 2021 and December 31, 2020, respectively	1,360	1,360
Additional paid-in capital	14,940,305	22,614,159
Accumulated deficit	(9,942,113)	(17,616,048)
<b>Total Shareholders' equity</b>	<b>5,000,010</b>	<b>5,000,006</b>
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$ 545,086,831</b>	<b>\$ 545,277,797</b>

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

**HORIZON ACQUISITION CORPORATION**  
**UNAUDITED CONDENSED STATEMENT OF OPERATIONS**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2021**

General and administrative expenses	\$ 962,762
Loss from operations	(962,762)
Other income	
Change in fair value of derivative warrant liabilities	8,628,420
Interest earned from interest-bearing cash account	240
Net gain on investments held in Trust Account	8,037
<b>Net income</b>	<b>\$ 7,673,935</b>
<b>Basic and diluted weighted average shares outstanding of Class A ordinary shares</b>	<b>54,398,433</b>
<b>Basic and diluted net income per share, Class A ordinary shares</b>	<b>\$ 0.00</b>
<b>Basic and diluted weighted average shares outstanding of Class B ordinary shares</b>	<b>13,599,608</b>
<b>Basic and diluted net income per share, Class B ordinary shares</b>	<b>\$ 0.56</b>

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

**HORIZON ACQUISITION CORPORATION**  
**UNAUDITED CONDENSED STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY**

	Ordinary Shares				Additional Paid- in Capital	Accumulated Deficit	Total Shareholders' Equity
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance - December 31, 2020	5,351,172	\$ 535	13,599,608	\$ 1,360	\$ 22,614,159	\$ (17,616,048)	\$ 5,000,006
Change in Class A ordinary shares subject to possible redemption	(767,393)	(77)	—	—	(7,673,854)	—	(7,673,931)
Net income	—	—	—	—	—	7,673,935	7,673,935
Balance - March 31, 2021 (unaudited)	4,583,779	\$ 458	13,599,608	\$ 1,360	\$ 14,940,305	\$ (9,942,113)	\$ 5,000,010

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

**HORIZON ACQUISITION CORPORATION**  
**UNAUDITED CONDENSED STATEMENT OF CASH FLOWS**  
**FOR THE THREE MONTHS ENDED MARCH 31, 2021**

<b>Cash Flows from Operating Activities:</b>	
Net income	\$ 7,673,935
Adjustments to reconcile net loss to net cash used in operating activities:	
Change in fair value of derivative warrant liabilities	(8,628,420)
Net (gain) loss on investments held in Trust Account	(8,037)
Changes in operating assets and liabilities:	
Accounts payable	(80,974)
Prepaid expenses	56,243
Accrued expenses	844,494
<b>Net cash used in operating activities</b>	<b>(142,759)</b>
<b>Net decrease in cash</b>	<b>(142,759)</b>
<b>Cash - beginning of the period</b>	<b>941,474</b>
<b>Cash - end of the period</b>	<b>\$ 798,715</b>
<b>Supplemental disclosure of noncash investing and financing activities:</b>	
Change in value of Class A ordinary shares subject to possible redemption	<u><u>\$ 7,673,930</u></u>

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

**HORIZON ACQUISITION CORPORATION**  
**NOTES TO UNAUDITED CONDENSED FINANCIAL STATEMENTS**

**Note 1 — Description of Organization, Business Operations and Basis of Presentation**

***Organization and General***

Horizon Acquisition Corporation (the “Company”), formerly known as EAC Holdings Inc., is a blank check company incorporated in the Cayman Islands on June 12, 2020. The Company was incorporated for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses that the Company has not yet identified (“initial Business Combination”). Although the Company is not limited to a particular industry or geographic region for purposes of consummating a Business Combination, the Company intends to focus in the financial, technology and business services sectors. The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, as amended (the “Securities Act”), as modified by the Jumpstart our Business Startups Act of 2012 (the “JOBS Act”).

As of March 31, 2021, the Company had not yet commenced operations. All activity for the period from June 12, 2020 (inception) through March 31, 2021 relates to the Company’s formation and the initial public offering (the “Initial Public Offering”) described below. The Company will not generate any operating revenues until after the completion of its initial Business Combination, at the earliest. The Company will generate non-operating income in the form of interest income on cash and cash equivalents from the proceeds derived from the Initial Public Offering. The Company has selected December 31 as its fiscal year end.

***Sponsor and Initial Public Offering***

The Company’s sponsor is Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”). The registration statement for the Company’s Initial Public Offering was declared effective on August 20, 2020. On August 25, 2020, the Company consummated its Initial Public Offering of 50,000,000 units (the “Units” and, with respect to the Class A ordinary shares included in the Units, the “Public Shares”), at \$10.00 per Unit, generating gross proceeds of \$500.0 million, and incurring offering costs of approximately \$19.6 million, inclusive of approximately \$12.1 million in deferred underwriting commissions (Note 6). On August 26, 2020, the Company issued an additional 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the exercise by the underwriters of a portion of their over-allotment option, generating additional gross proceeds of approximately \$44.0 million, and incurring additional offering costs of approximately \$2.4 million, inclusive of an additional of approximately \$1.5 million in deferred underwriting commissions.

Simultaneously, with the consummation of the Initial Public Offering, the Company consummated the private placement (the “Private Placement”) of 5,933,333 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating total proceeds of \$8.9 million (Note 4). In connection with the exercise by the underwriters of the over-allotment option, the Sponsor purchased an additional 586,458 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating additional total proceeds of approximately \$0.9 million.

***Trust Account***

Upon the closing of the Initial Public Offering and the Private Placement on August 25, 2020, approximately \$500.0 million (\$10.00 per Unit) of the net proceeds of the Initial Public Offering and certain of the proceeds of the Private Placement was placed in a trust account (“Trust Account”), with Continental Stock Transfer & Trust Company acting as trustee. On August 26, 2020, an additional amount of approximately \$44.0 million, for a total of approximately \$544.0 million was deposited to the Trust Account. The proceeds in the Trust Account are invested in United States “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act having a maturity of 185 days or less or in money market funds meeting certain conditions under

Rule 2a-7 promulgated under the Investment Company Act which invest only in direct U.S. government treasury obligations, as determined by the Company, until the earlier of: (i) the completion of a Business Combination and (ii) the distribution of the Trust Account as described below.

### ***Initial Business Combination***

The Company's management has broad discretion with respect to the specific application of the net proceeds of its Initial Public Offering and the sale of Private Placement Warrants, although substantially all of the net proceeds are intended to be applied generally toward consummating a Business Combination. The Company's initial Business Combination must be with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in the Trust Account (as defined below) (excluding the deferred underwriting commissions and taxes payable on the income earned on the Trust Account) at the time the Company signs a definitive agreement in connection with the initial Business Combination. However, the Company will only complete a Business Combination if the post-transaction company owns or acquires 50% or more of the outstanding voting securities of the target business or otherwise acquires a controlling interest in the target business sufficient for it not to be required to register as an investment company under the Investment Company Act of 1940, as amended, or the Investment Company Act.

The Company will provide the holders of the Public Shares (the "Public Shareholders") with the opportunity to redeem all or a portion of their Public Shares upon the completion of a Business Combination either (i) in connection with a general meeting called to approve the Business Combination or (ii) by means of a tender offer. The decision as to whether the Company will seek shareholder approval of a Business Combination or conduct a tender offer will be made by the Company. The Public Shareholders will be entitled to redeem their Public Shares for a pro rata portion of the amount then in the Trust Account (initially anticipated to be \$10.00 per share, plus any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay its tax obligations). The per-share amount to be distributed to Public Shareholders who redeem their Public Shares will not be reduced by the deferred underwriting commissions the Company will pay to the underwriters (as discussed in Note 6). These Public Shares have been recorded at a redemption value and classified as temporary equity upon the completion of the Initial Public Offering, in accordance with Accounting Standards Codification ("ASC") Topic 480 "Distinguishing Liabilities from Equity." In such case, the Company will proceed with a Business Combination if the Company has net tangible assets of at least \$5,000,001 upon such consummation of a Business Combination and a majority of the shares voted are voted in favor of the Business Combination. If a shareholder vote is not required by applicable law or stock exchange listing requirements and the Company does not decide to hold a shareholder vote for business or other reasons, the Company will, pursuant to the amended and restated memorandum and articles of association which was adopted by the Company upon the consummation of the Initial Public Offering (the "Amended and Restated Memorandum and Articles of Association"), conduct the redemptions pursuant to the tender offer rules of the U.S. Securities and Exchange Commission (the "SEC"), and file tender offer documents with the SEC prior to completing a Business Combination. If, however, a shareholder approval of the transaction is required by applicable law or stock exchange listing requirements, or the Company decides to obtain shareholder approval for business or other reasons, the Company will offer to redeem shares in conjunction with a proxy solicitation pursuant to the proxy rules and not pursuant to the tender offer rules. Additionally, each Public Shareholder may elect to redeem their Public Shares irrespective of whether they vote for or against the proposed transaction or whether they were a Public Shareholder on the record date for the general meeting held to approve the proposed transaction. If the Company seeks shareholder approval in connection with a Business Combination, the holders of the founder shares prior to this Initial Public Offering (the "Initial Shareholders") have agreed to vote their founder shares (as defined in Note 5) and any Public Shares purchased during or after the Initial Public Offering in favor of a Business Combination. In addition, the Initial Shareholders have agreed to waive their redemption rights with respect to their founder shares and Public Shares in connection with the completion of a Business Combination. In addition, the Company has agreed not to enter into a definitive agreement regarding an initial Business Combination without the prior consent of the Sponsor.



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Notwithstanding the foregoing, the Company's Amended and Restated Memorandum and Articles of Association provides that a Public Shareholder, together with any affiliate of such shareholder or any other person with whom such shareholder is acting in concert or as a "group" (as defined under Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), will be restricted from redeeming its shares with respect to more than an aggregate of 15% or more of the Class A ordinary shares sold in the Initial Public Offering, without the prior consent of the Company.

The Company's Sponsor, officers and directors have agreed not to propose an amendment to the Company's Amended and Restated Memorandum and Articles of Association to either (i) to modify the substance or timing of the Company's obligation to allow the redemption of its Public Shares in connection with a Business Combination or to redeem 100% of its Public Shares if the Company does not complete a Business Combination within 24 months from the closing of the Initial Public Offering or (ii) with respect to any other provisions relating to shareholders' rights or pre-initial business combination activity, unless the Company provides the Public Shareholders with the opportunity to redeem their Class A ordinary shares in conjunction with any such amendment.

If the Company is unable to complete a Business Combination within 24 months from the closing of the Initial Public Offering, or August 25, 2022 (the "Combination Period"), the Company will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding Public Shares, which redemption will completely extinguish Public Shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the remaining shareholders and the board of directors, liquidate and dissolve, subject in the case of clauses (ii) and (iii) to the Company's obligations under Cayman Islands law to provide for claims of creditors and in all cases subject to the other requirements of applicable law.

In connection with the redemption of 100% of the Company's outstanding Public Shares for a portion of the funds held in the Trust Account, each holder will receive a full pro rata portion of the amount then in the Trust Account, plus any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay the Company's taxes payable (less taxes payable and up to \$100,000 of interest to pay dissolution expenses). The Initial Shareholders have agreed to waive their liquidation rights with respect to the founder shares if the Company fails to complete a Business Combination within the Combination Period. However, if the Initial Shareholders should acquire Public Shares in or after the Initial Public Offering, they will be entitled to liquidating distributions from the Trust Account with respect to such Public Shares if the Company fails to complete a Business Combination within the Combination Period. The underwriters have agreed to waive their rights to their deferred underwriting commission (see Note 6) held in the Trust Account in the event the Company does not complete a Business Combination within the Combination Period and, in such event, such amounts will be included with the funds held in the Trust Account that will be available to fund the redemption of the Company's Public Shares. In the event of such distribution, it is possible that the per share value of the residual assets remaining available for distribution in the Trust Account will be less than the \$10.00 per share initially held in the Trust Account. In order to protect the amounts held in the Trust Account, the Sponsor has agreed that it will be liable to the Company if and to the extent any claims by a third party for services rendered or products sold to the Company, or a prospective target business with which the Company has entered into a written letter of intent, confidentiality or other similar agreement or business combination agreement, reduce the amount of funds in the Trust Account to below the lesser of (i) \$10.00 per public share and (ii) the actual amount per public share held in the trust account as of the date of the liquidation of the Trust Account, if less than \$10.00 per share due to reductions in the value of the trust assets, less taxes payable, provided that such liability will not apply to any claims by a third party or prospective target business who executed a waiver of any and all rights to the monies held in the Trust Account (whether or not such waiver is enforceable) nor will it apply to any claims under the Company's indemnity of the underwriters of the Initial Public Offering against certain liabilities,

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including liabilities under the Securities Act of 1933, as amended (the “Securities Act”). In the event that an executed waiver is deemed to be unenforceable against a third party, the Sponsor will not be responsible to the extent of any liability for such third-party claims. The Company will seek to reduce the possibility that the Sponsor will have to indemnify the Trust Account due to claims of creditors by endeavoring to have vendors, service providers (except the Company’s independent registered public accounting firm), prospective target businesses or other entities with which the Company does business, execute agreements with the Company waiving any right, title, interest or claim of any kind in or to monies held in the Trust Account. There can be no guarantee that the Company will be successful in obtaining such waivers from its targeted vendors and service providers.

### ***Basis of presentation***

The accompanying unaudited condensed financial statements are presented in U.S. dollars in conformity with accounting principles generally accepted in the United States of America (“GAAP”) for financial information and pursuant to the rules and regulations of the SEC. Accordingly, they do not include all of the information and footnotes required by GAAP. In the opinion of management, the unaudited condensed financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. Operating results for the three months ended March 31, 2021 are not necessarily indicative of the results that may be expected through December 31, 2021, or any future period.

The accompanying unaudited condensed financial statements should be read in conjunction with the audited financial statements and notes thereto included in the Form 10-K, as amended, filed by the Company with the SEC on May 7, 2021.

### ***Emerging growth company***

The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act, and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company’s financial statements with other public companies difficult or impossible because of the potential differences in accounting standards used.

### ***Liquidity and Capital Resources***

As of March 31, 2021, the Company had approximately \$799,000 outside of the Trust Account.

The Company’s liquidity needs up to March 31, 2021 have been satisfied through (i) the payment of \$25,000 from the Sponsor to cover certain expenses on behalf of the Company in exchange for the issuance of the founder

shares, (ii) a loan of approximately \$185,000 from the Sponsor (see Note 5), and (iii) the proceeds from the consummation of the Private Placement, the proceeds of which are not held in the Trust Account. The Company fully repaid the loan from the Sponsor on August 28, 2020. In addition, in order to finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company's officers and directors may, but are not obligated to, provide the Company Working Capital Loans (see Note 5). As of March 31, 2021 and December 31, 2020, there were no amounts outstanding under any Working Capital Loan.

Based on the foregoing, management believes that the Company will have sufficient working capital and borrowing capacity from the Sponsor or an affiliate of the Sponsor, or certain of the Company's officers and directors to meet its needs through the earlier of the consummation of an Initial Business Combination or one year from this filing. Over this time period, the Company will be using these funds for paying existing accounts payable, identifying and evaluating prospective initial business combination candidates, performing due diligence on prospective target businesses, paying for travel expenditures, selecting the target business to merge with or acquire, and structuring, negotiating and consummating the Initial Business Combination.

## **Note 2 — Summary of Significant Accounting Policies**

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

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. One of the more significant accounting estimates included in these financial statements is the determination of the fair value of the warrant liability.

Making estimates requires management to exercise significant judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, the actual results could differ significantly from those estimates.

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

The Company considers all short-term investments with an original maturity of three months or less when purchased to be cash equivalents. There were no cash equivalents at March 31, 2021 or December 31, 2020.

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

Financial instruments that potentially subject the Company to concentration of credit risk consist of cash accounts in a financial institution which, at times, may exceed the federal depository insurance coverage of \$250,000, and investments held in Trust Account. The Company has not experienced losses on these accounts and management believes the Company is not exposed to significant risks on such accounts. The Company's investments held in the Trust Account as of December 31, 2020 is comprised of investments in U.S. Treasury securities with an original maturity of 185 days or less or investments in a money market funds that comprise only U.S. treasury securities money market funds.

### ***Investments Held in the Trust Account***

The Company's portfolio of investments held in the Trust Account is comprised of U.S. government securities, within the meaning set forth in Section 2(a)(16) of the Investment Company Act, with a maturity of 185 days or less, or investments in money market funds that invest in U.S. government securities, or a combination thereof. The Company's investments held in the Trust Account are classified as trading securities. Trading securities are presented on the balance sheets at fair value at the end of each reporting period. Gains and losses resulting from

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the change in fair value of these securities is included in net gain on investments held in Trust Account in the accompanying statement of operations. The estimated fair values of investments held in the Trust Account are determined using available market information.

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

The fair value of the Company's assets and liabilities, which qualify as financial instruments under the ASC 820, "Fair Value Measurements and Disclosures," approximates the carrying amounts represented in the balance sheet.

### ***Fair Value Measurements***

Fair value is defined as the price that would be received for sale of an asset or paid for transfer of a liability, in an orderly transaction between market participants at the measurement date. GAAP establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). These tiers include:

- Level 1, defined as observable inputs such as quoted prices (unadjusted) for identical instruments in active markets;
- Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable such as quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active; and
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, such as valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

In some circumstances, the inputs used to measure fair value might be categorized within different levels of the fair value hierarchy. In those instances, the fair value measurement is categorized in its entirety in the fair value hierarchy based on the lowest level input that is significant to the fair value measurement.

As of March 31, 2021 and December 31, 2020, the carrying values of cash, accounts payable and accrued expenses approximate their fair values due to the short-term nature of the instruments. The Company's marketable securities held in Trust Account is comprised of investments in U.S. Treasury securities with an original maturity of 185 days or less and are recognized at fair value. The fair value of marketable securities held in Trust Account is determined using quoted prices in active markets.

The fair value of warrants issued in connection with the Initial Public Offering, exercise of the over-allotment option and Private Placement were initially and subsequently measured at fair value using a Monte Carlo simulation model. Beginning as of December 31, 2020, the fair value of Public Warrants have been measured based on the listed market price of such the Public Warrants. The Private Placement Warrants continue to be measured at fair value using a Monte Carlo simulation model through March 31, 2021.

### ***Derivative Warrant Liabilities***

The Company does not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. The Company evaluates all of its financial instruments, including issued stock purchase warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480 and ASC 815-15. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is re-assessed at the end of each reporting period.

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The 18,132,811 issued in connection with the Initial Public Offering (the “Public Warrants”) and the 6,519,791 Private Placement Warrants are recognized as derivative liabilities in accordance with ASC 815-40. Accordingly, the Company recognizes the warrant instruments as liabilities at fair value and adjusts the instruments to fair value at each reporting period. The liabilities are subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in the Company’s statement of operations.

### ***Offering costs associated with Initial Public Offering***

Offering costs consist of legal, accounting, underwriting fees and other costs incurred through the balance sheet date that are directly related to the Initial Public Offering. Offering costs are allocated to the separable financial instruments issued in the Initial Public Offering based on a relative fair value basis, compared to total proceeds received. Offering costs associated with warrant liabilities are expensed as incurred and presented as non-operating expenses in the statement of operations. Offering costs associated with the Public Shares were charged to shareholders’ equity. Of the total offering costs of the Initial Public Offering, approximately \$0.6 million was expensed as incurred and \$21.5 million is included in stockholders’ equity.

### ***Class A Ordinary Shares Subject to Possible Redemption***

The Company accounts for its Class A ordinary shares subject to possible redemption in accordance with the guidance in ASC Topic 480 “Distinguishing Liabilities from Equity.” Class A ordinary shares subject to mandatory redemption (if any) are classified as liability instruments and are measured at fair value. Shares of conditionally redeemable Class A ordinary shares (including Class A ordinary shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within the Company’s control) are classified as temporary equity. At all other times, Class A ordinary shares are classified as shareholders’ equity. The Company’s Class A ordinary shares feature certain redemption rights that are considered to be outside of the Company’s control and subject to the occurrence of uncertain future events. Accordingly, at March 31, 2021 and December 31, 2020, 49,814,654 and 49,047,261 Class A ordinary shares subject to possible redemption, respectively, are presented as temporary equity, outside of the shareholders’ equity section of the Company’s balance sheet.

### ***Income Taxes***

ASC Topic 740 prescribes a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. There were no unrecognized tax benefits as of March 31, 2021. The Company’s management determined that the Cayman Islands is the Company’s only major tax jurisdiction. The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. No amounts were accrued for the payment of interest and penalties as of March 31, 2021. The Company is currently not aware of any issues under review that could result in significant payments, accruals or material deviation from its position. The Company is subject to income tax examinations by major taxing authorities since inception.

There is currently no taxation imposed on income by the Government of the Cayman Islands. In accordance with Cayman Islands income tax regulations, income taxes are not levied on the Company. Consequently, income taxes are not reflected in the Company’s financial statements. The Company’s management does not expect that the total amount of unrecognized tax benefits will materially change over the next twelve months.

### ***Net Income per Ordinary Share***

The Company complies with accounting and disclosure requirements of ASC Topic 260, “Earnings Per Share.” Net income per common share is computed by dividing net loss by the weighted average number of shares of ordinary shares outstanding during the period. The Company has not considered the effect of the warrants sold in

the Initial Public Offering and Private Placement to purchase an aggregate of 24,652,602 shares of the Company's ordinary shares in the calculation of diluted loss per share, since the exercise of the warrants are contingent upon the occurrence of future events and the inclusion of such warrants would be anti-dilutive.

The Company's statement of operations includes a presentation of income per common share for Class A ordinary shares subject to possible redemption in a manner similar to the two-class method of income per common share. Net income per common share, basic and diluted, for Class A ordinary shares subject to possible redemption is calculated by dividing the proportionate share of income or loss on marketable securities held by the Trust Account, net of applicable franchise and income taxes, by the weighted average number of shares of Class A ordinary shares subject to possible redemption outstanding since original issuance.

Net income per ordinary share, basic and diluted, for non-redeemable common stock is calculated by dividing the net income, adjusted for income or loss on marketable securities attributable to common stock subject to possible redemption, by the weighted average number of non-redeemable common stock outstanding for the period.

Non-redeemable ordinary shares include Founder Shares and non-redeemable shares of Class A ordinary shares as these shares do not have any redemption features. Non-redeemable ordinary shares participate in the income or loss on marketable securities based on non-redeemable shares' proportionate interest.

### ***Recent Adopted Accounting Standards***

In August 2020, the FASB issued Accounting Standard Update ("ASU") No. 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU also removes certain settlement conditions that are required for equity-linked contracts to qualify for the derivative scope exception and it also simplifies the diluted earnings per share calculation in certain areas. The Company early adopted the ASU on January 1, 2021. Adoption of the ASU did not impact the Company's financial position, results of operations or cash flows.

### ***Recent Issued Accounting Standards***

The Company's management does not believe that any recently issued, but not yet effective, accounting standards updates, if currently adopted, would have a material effect on the accompanying financial statement.

### **Note 3 — Initial Public Offering**

On August 25, 2020, the Company consummated its Initial Public Offering of 50,000,000 Units, at \$10.00 per Unit, generating gross proceeds of \$500.0 million, and incurring offering costs of approximately \$19.6 million, inclusive of approximately \$12.1 million in deferred underwriting commissions. The Sponsor purchased 15,500,000 Units (the "Affiliated Units") at the Initial Public Offering price. The underwriters did not receive any underwriting discounts or commissions on the Affiliated Units.

On August 26, 2020, the Company issued an additional of 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the exercise by the underwriters of a portion of their over-allotment option, generating additional gross proceeds of approximately \$44.0 million, and incurring additional offering costs of approximately \$2.4 million, inclusive of an additional of approximately \$1.5 million in deferred underwriting commissions.

Each Unit will consist of one Class A ordinary share and one-third of one redeemable warrant ("Public Warrant"). Each whole Public Warrant will entitle the holder to purchase one Class A ordinary share at an exercise price of \$11.50 per share, subject to adjustment (see Note 8).

#### **Note 4 — Private Placement**

As a result of the purchase of the Affiliated Units by the Sponsor, the number of Private Placement Warrants purchased by the Sponsor was reduced to account for the corresponding reduction in underwriting discounts payable upon completion the Initial Public Offering. On August 25, 2020, simultaneous with the consummation of the Initial Public Offering, the Company consummated the Private Placement of 5,933,333 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating total proceeds of \$8.9 million. In connection with the partial exercise of the over-allotment option, the Sponsor purchased an additional 586,458 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating additional total proceeds of approximately \$0.9 million. A portion of the proceeds from the sale of the Private Placement Warrants to the Sponsor was added to the proceeds from the Initial Public Offering held in the Trust Account.

Each whole Private Placement Warrant is exercisable for one whole Class A ordinary share at a price of \$11.50 per share. If the Company does not complete a Business Combination within the Combination Period, the Private Placement Warrants will expire worthless. The Private Placement Warrants are non-redeemable except as described below and exercisable on a cashless basis so long as they are held by the Sponsor or its permitted transferees.

The Sponsor and the Company's officers and directors agreed, subject to limited exceptions, not to transfer, assign or sell any of their Private Placement Warrants until 30 days after the completion of the initial Business Combination.

#### **Note 5 — Related Party Transactions**

##### ***Founder Shares***

On July 2, 2020, the Sponsor paid an aggregate of \$25,000 for certain expenses on behalf of the Company in exchange for issuance of 14,375,000 Class B ordinary shares (the "founder shares"). The Sponsor agreed to forfeit up to an aggregate of 1,875,000 founder shares to the extent that the option to purchase additional units was not exercised in full by the underwriters or was reduced, so that the founder shares would represent 20% of the Company's issued and outstanding shares after the Initial Public Offering. On August 25, 2020, in connection with the purchase of the Affiliated Units, the Sponsor surrendered 581,250 founder shares to the Company for no consideration. On August 26, 2020, the underwriters partially exercised their over-allotment option, which resulted in 1,099,608 founder shares no longer being subject to forfeiture. On October 4, 2020, 194,142 shares were forfeited as the remainder of the over-allotment option expired unexercised. As a result, as of March 31, 2021 and December 31, 2020, no remaining Class B ordinary shares were subject to forfeiture.

The Initial Shareholders agreed not to transfer, assign or sell any of their founder shares until the earlier to occur of: (i) one year after the completion of the initial Business Combination or earlier if, subsequent to the initial Business Combination, the closing price of the Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, capitalization of shares, share dividends, rights issuances, subdivisions reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the initial Business Combination, and (ii) the date following the completion of the initial Business Combination on which the Company completes a liquidation, merger, share exchange or other similar transaction that results in all of the Company's shareholders having the right to exchange their Class A ordinary shares for cash, securities or other property.

##### ***Related Party Loans***

On July 2, 2020, the Sponsor agreed to loan the Company up to \$300,000 to be used for the payment of costs related to the Initial Public Offering pursuant to a promissory note (the "Note"). The Note is non-interest bearing, unsecured and due upon the closing of the Initial Public Offering. The Company borrowed approximately \$185,000 under the Note, and fully repaid this balance on August 28, 2020.

In addition, in order to fund working capital deficiencies or finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company's officers and directors may, but are not obligated to, loan the Company funds as may be required ("Working Capital Loans"). If the Company completes a Business Combination, the Company may repay the Working Capital Loans out of the proceeds of the Trust Account released to the Company. Otherwise, the Working Capital Loans may be repaid only out of funds held outside the Trust Account. In the event that a Business Combination does not close, the Company may use a portion of proceeds held outside the Trust Account to repay the Working Capital Loans but no proceeds held in the Trust Account would be used to repay the Working Capital Loans. The Working Capital Loans would either be repaid upon consummation of a Business Combination, without interest, or, at the lenders' discretion, up to \$1.5 million of such Working Capital Loans may be convertible into warrants of the post Business Combination entity at a price of \$1.50 per warrant. The warrants would be identical to the Private Placement Warrants. Except for the foregoing, the terms of such Working Capital Loans, if any, have not been determined and no written agreements exist with respect to such loans. As of March 31, 2021 and December 31, 2020, the Company had no borrowings under the Working Capital Loans.

#### ***Administrative Support Agreement***

The Company agreed to pay the Sponsor a total of \$10,000 per month, commencing on the date of listing on the NYSE, for office space, utilities, secretarial and administrative support services provided to members of the management team. Upon completion of the initial Business Combination or the Company's liquidation, the Company will cease paying these monthly fees. From the date the securities were first listed on the NYSE through March 31, 2021, the Sponsor waived the fee.

In addition, the Sponsor, officers and directors, or any of their respective affiliates will be reimbursed for any out-of-pocket expenses incurred in connection with activities on the Company's behalf such as identifying potential target businesses and performing due diligence on suitable Business Combinations. The Audit Committee of the Board of Directors will review on a quarterly basis all payments that are made by the Company to the Sponsor, officers or directors, or their affiliates. Any such payments prior to an initial Business Combination will be made from funds held outside the Trust Account.

#### **Note 6 — Commitments and Contingencies**

##### ***Registration and Shareholder Rights***

The holders of the founder shares, Private Placement Warrants and warrants that may be issued upon conversion of Working Capital Loans (and any Class A ordinary shares issuable upon the exercise of the Private Placement Warrants and warrants that may be issued upon conversion of Working Capital Loans) are entitled to registration rights pursuant to a registration and shareholder rights agreement. The holders of these securities are entitled to make up to three demands, excluding short form demands, that the Company register such securities. In addition, the holders have certain "piggy-back" registration rights with respect to registration statements filed subsequent to the completion of the initial Business Combination. The Company will bear the expenses incurred in connection with the filing of any such registration statements.

##### ***Underwriting Agreement***

The Company granted the underwriters a 45-day option, from August 20, 2020, the date of the final prospectus related to the initial public offering, to purchase up to 7,500,000 additional Units at the Initial Public Offering price less the underwriting discounts and commissions. On August 26, 2020, the Company issued an additional of 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the partial exercise of the underwriters' over-allotment option.

The underwriters were entitled to an underwriting discount of \$0.20 per unit, or \$6.9 million in the aggregate, paid upon the closing of the Initial Public Offering. In addition, \$0.35 per unit, or approximately \$12.1 million in



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the aggregate will be payable to the underwriters for deferred underwriting commissions. The deferred fee will become payable to the underwriters from the amounts held in the Trust Account solely in the event that the Company completes a Business Combination, subject to the terms of the underwriting agreement.

In connection with the consummation of the sale of Units pursuant to the over-allotment option on August 26, 2020, the underwriters were entitled to an additional fee of approximately \$0.9 million paid upon closing and an additional deferred underwriting commissions of approximately \$1.5 million.

### ***Risks and Uncertainties***

Management continues to evaluate the impact of the COVID-19 pandemic and has concluded that, while it is reasonably possible that the virus could have a negative effect on the Company's financial position, results of its operations, and/or search for a target company, the specific impact is not readily determinable as of the date of these financial statements. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **Note 7 — Derivative Warrant Liabilities**

As of March 31, 2021 and December 31, 2020, the Company had 18,132,811 and 6,519,791 Public Warrants and Private Placement Warrants, respectively, outstanding.

Public Warrants may only be exercised for a whole number of shares. No fractional Public Warrants will be issued upon separation of the Units and only whole Public Warrants will trade. The Public Warrants will become exercisable on the later of (a) 30 days after the completion of an initial Business Combination and (b) 12 months from the closing of the Initial Public Offering; provided in each case that the Company has an effective registration statement under the Securities Act covering the Class A ordinary shares issuable upon exercise of the Public Warrants and a current prospectus relating to them is available and such shares are registered, qualified or exempt from registration under the securities, or blue sky, laws of the state of residence of the holder (or the Company permit holders to exercise their warrants on a cashless basis under certain circumstances). The Company has agreed that as soon as practicable, but in no event later than 15 business days after the closing of the initial Business Combination, the Company will use commercially reasonable efforts to file with the SEC a registration statement covering the Class A ordinary shares issuable upon exercise of the warrants and to maintain a current prospectus relating to those Class A ordinary shares until the warrants expire or are redeemed, as specified in the warrant agreement. If a registration statement covering the Class A ordinary shares issuable upon exercise of the warrants is not effective by the 60th day after the closing of the initial Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company will have failed to maintain an effective registration statement, exercise warrants on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act or another exemption. Notwithstanding the above, if the Class A ordinary shares are at the time of any exercise of a warrant not listed on a national securities exchange such that they satisfy the definition of a "covered security" under Section 18(b)(1) of the Securities Act, the Company may, at its option, require holders of Public Warrants who exercise their warrants to do so on a "cashless basis" and, in the event the Company so elects, the Company will not be required to file or maintain in effect a registration statement, and in the event the Company does not so elect, it will use commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available.

The warrants have an exercise price of \$11.50 per share, subject to adjustments, and will expire five years after the completion of the initial Business Combination or earlier upon redemption or liquidation. In addition, if (x) the Company issues additional Class A ordinary shares or equity-linked securities for capital raising purposes in connection with the closing of the initial Business Combination at an issue price or effective issue price of less than \$9.20 per Class A ordinary share (with such issue price or effective issue price to be determined in good faith by the board of directors and, in the case of any such issuance to the Initial Shareholders or their affiliates,

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without taking into account any founder shares held by the Initial Shareholders or such affiliates, as applicable, prior to such issuance) (the “Newly Issued Price”), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of the initial Business Combination on the date of the consummation of the initial Business Combination (net of redemptions), and (z) the volume weighted average trading price of Class A ordinary shares during the 10-trading day period starting on the trading day prior to the day on which the Company consummates its initial Business Combination (such price, the “Market Value”) is below \$9.20 per share, then the exercise price of the warrants will be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, the \$18.00 per share redemption trigger price will be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price, and the \$10.00 per share redemption trigger price will be adjusted (to the nearest cent) to be equal to the higher of the Market Value and the Newly Issued Price See “- Redemption of warrants when the price per class A ordinary share equals or exceeds \$18.00” and “- Redemption of warrants when the price per class A ordinary share equals or exceeds \$10.00” as described below.

The Private Placement Warrants are identical to the Public Warrants underlying the Units sold in the Initial Public Offering, except (i) that the Private Placement Warrants and the Class A ordinary shares issuable upon exercise of the Private Placement Warrants will not be transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions, (ii) except as described below, the Private Placement Warrants will be non-redeemable so long as they are held by the Sponsor or such its permitted transferees and (iii) the Sponsor or its permitted transferees will have the option to exercise the Private Placement Warrants on a cashless basis and have certain registration rights. If the Private Placement Warrants are held by someone other than the Sponsor or its permitted transferees, the Private Placement Warrants will be redeemable by the Company in all redemption scenarios and exercisable by such holders on the same basis as the Public Warrants.

### *Redemption of warrants when the price per Class A ordinary share equals or exceeds \$18.00:*

Once the warrants become exercisable, the Company may call the outstanding warrants for redemption (except as described herein with respect to the Private Placement Warrants):

- in whole and not in part;
- at a price of \$0.01 per warrant;
- upon a minimum of 30 days’ prior written notice of redemption to each warrant holder; and
- if, and only if, the last reported sale price (the “closing price”) of Class A ordinary shares equals or exceeds \$18.00 per share (as adjusted) for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders.

### *Redemption of warrants when the price per Class A ordinary share equals or exceeds \$10.00:*

Once the warrants become exercisable, the Company may call the outstanding warrants for redemption (except as described herein with respect to the Private Placement Warrants):

- in whole and not in part;
- at \$0.10 per warrant upon a minimum of 30 days’ prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of Class A ordinary shares to be determined by reference to an agreed table based on the redemption date and the “fair market value” of Class A ordinary shares;
- if, and only if, the closing price of Class A ordinary shares equals or exceeds \$10.00 per share (as adjusted) for any 20 trading days within the 30-trading day period ending three trading days before the Company sends the notice of redemption to the warrant holders; and

- if the closing price of the Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders is less than \$18.00 per share (as adjusted), the Private Placement Warrants must also be concurrently called for redemption on the same terms as the outstanding Public Warrants, as described above.

The “fair market value” of Class A ordinary shares for the above purpose shall mean the volume weighted average price of Class A ordinary shares during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of warrants. In no event will the warrants be exercisable on a cashless basis in connection with this redemption feature for more than 0.361 Class A ordinary shares per warrant (subject to adjustment).

In no event will the Company be required to net cash settle any warrant. If the Company is unable to complete a Business Combination within the Combination Period and the Company liquidates the funds held in the Trust Account, holders of warrants will not receive any of such funds with respect to their warrants, nor will they receive any distribution from the Company’s assets held outside of the Trust Account with the respect to such warrants. Accordingly, the warrants may expire worthless.

#### **Note 8 — Shareholders’ Equity**

**Preference Shares** - The Company is authorized to issue 1,000,000 preference with such designations, voting and other rights and preferences as may be determined from time to time by the Company’s board of directors. As of March 31, 2021 and December 31, 2020, there were no preference shares issued or outstanding.

**Class A Ordinary Shares** - The Company is authorized to issue 400,000,000 Class A ordinary shares with a par value of \$0.0001 per share. Holders of the Company’s Class A ordinary shares are entitled to one vote for each share. As of March 31, 2021, there were 54,398,433 Class A ordinary shares issued and outstanding, including 49,814,654 Class A ordinary shares subject to possible redemption and have been reflected as temporary equity on the balance sheet. As of December 31, 2020, there were 54,398,433 Class A ordinary shares issued and outstanding, including 49,047,261 Class A ordinary shares subject to possible redemption and have been reflected as temporary equity on the balance sheet.

**Class B Ordinary Shares** - The Company is authorized to issue 40,000,000 Class B ordinary shares with a par value of \$0.0001 per share. On July 2, 2020, the Company issued 14,375,000 Class B ordinary shares, of which an aggregate of up to 1,875,000 Class B ordinary shares were subject to forfeiture to the Company by the Initial Shareholders for no consideration to the extent that the underwriters’ over-allotment option is not exercised in full or in part, so that the Initial Shareholders would collectively own 20% of the Company’s issued and outstanding ordinary shares after the Initial Public Offering. On August 25, 2020, in connection with the purchase of the Affiliated Units, the Sponsor surrendered 581,250 founder shares to the Company for no consideration. On August 26, 2020, the underwriters partially exercised their over-allotment option, which resulted in 1,099,608 founder shares no longer being subject to forfeiture. As a result, 194,142 Class B ordinary shares were subject to forfeiture. On October 4, 2020, these shares were forfeited as the remainder of the over-allotment option expired unexercised. As of March 31, 2021 and December 31, 2020, there were 13,599,608 Class B ordinary shares outstanding, and no shares were subject to forfeiture, respectively.

Ordinary shareholders of record are entitled to one vote for each share held on all matters to be voted on by shareholders and holders of Class A ordinary shares and holders of Class B ordinary shares will vote together as a single class on all matters submitted to a vote of the shareholders except as required by law; provided that only holders of Class B ordinary shares will have the right to vote on the appointment of directors prior to, or in connection with, the completion of the initial Business Combination.

The Class B ordinary shares will automatically convert into Class A ordinary shares at the time of the consummation of the initial Business Combination on a one-for-one basis, subject to adjustment for share

sub-divisions, share capitalizations, reorganizations, recapitalizations and the like, and subject to further adjustment. In the case that additional Class A ordinary shares or equity-linked securities are issued or deemed issued in connection with the initial Business Combination, the number of Class A ordinary shares issuable upon conversion of all founder shares will equal, in the aggregate, on an as-converted basis, 20% of the total number of Class A ordinary shares outstanding after such conversion (after giving effect to any redemptions of Class A ordinary shares by Public Shareholders), including the total number of Class A ordinary shares issued, or deemed issued or issuable upon conversion or exercise of any equity-linked securities or rights issued or deemed issued, by the Company in connection with or in relation to the consummation of the initial Business Combination, excluding any Class A ordinary shares or equity-linked securities exercisable for or convertible into Class A ordinary shares issued, or to be issued, to any seller in the initial Business Combination and any Private Placement Warrants issued upon conversion of Working Capital Loans; provided that such conversion of founder shares will never occur on a less than one-for-one basis.

## Note 9 — Fair Value Measurements

The following table presents information about the Company's assets that are measured at fair value on a recurring basis as of March 31, 2021 and December 31, 2020 and indicates the fair value hierarchy of the valuation techniques that the Company utilized to determine such fair value.

### March 31, 2021

Description	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>			
Investments held in Trust Account	\$544,010,831	\$ —	\$ —
<b>Liabilities</b>			
Derivative warrant liabilities -Public Warrants	\$ 19,946,090	\$ —	\$ —
Derivative warrant liabilities -Private Warrants	\$ —	\$ —	\$ 7,171,770

### December 31, 2020

Description	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)
<b>Assets</b>			
Investments held in Trust Account	\$544,002,795	\$ —	\$ —
<b>Liabilities</b>			
Derivative warrant liabilities -Public Warrants	\$ 26,292,580	\$ —	\$ —
Derivative warrant liabilities -Private Warrants	\$ —	\$ —	\$ 9,453,700

Transfers to/from Levels 1, 2, and 3 are recognized at the end of the reporting period. During the period there were no transfers to/from Levels 1, 2, and 3.

Level 1 instruments include investments in mutual funds invested in government securities. The Company uses inputs such as actual trade data, benchmark yields, quoted market prices from dealers or brokers, and other similar sources to determine the fair value of its investments.

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The fair value of the Private Placement Warrants were initially and subsequently (each measurement date) measured using a Monte Carlo simulation model. The fair value of Public Warrants issued in connection with the Initial Public Offering are measured based on the listed market price of such warrants, a Level 1 measurement. For the three months ended March 31, 2021, the Company recognized a charge to the statement of operations resulting from an increase in the fair value of liabilities of \$8.6 million presented as change in fair value of derivative warrant liabilities on the accompanying unaudited condensed statement of operations.

The estimated fair value of the Private Placement Warrants is determined using Level 3 inputs. Inherent in a Monte Carlo simulation are assumptions related to expected stock-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimates the volatility of its common stock warrants based on implied volatility from the Company's traded warrants and from historical volatility of select peer company's common stock that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates remaining at zero.

The following table provides quantitative information regarding Level 3 fair value measurements inputs at their measurement dates:

	March 31, 2021	December 31, 2020
Volatility	17.7%	22.1%
Share price	\$ 9.88	\$ 10.02
Risk-free rate	0.92%	0.36%
Dividend yield	0.0%	0.0%

The change in the fair value of the derivative warrant liabilities for the period for the three months ended March 31, 2021 is summarized as follows:

Warrant liabilities at December 31, 2020	\$ 35,746,280
Change in fair value of warrant liabilities	(8,628,420)
Warrant liabilities at March 31, 2021	<u>\$ 27,117,860</u>

### **Note 10 — Subsequent Events**

The Company evaluated events that have occurred after the balance sheet date up to the date that the financial statements were issued. Based upon this review, other than the event disclosed below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements which have not previously been disclosed within the financial statements.

On April 21, 2021, the Company entered into a Transaction Agreement with Hoya Topco, LLC ("Topco"), a Delaware limited liability company, Hoya Intermediate, LLC ("Intermediate"), a Delaware limited liability company, and Vivid Seats Inc. ("VS PubCo"), a Delaware corporation and a direct wholly owned subsidiary of Intermediate, pursuant to which the Company will merge with and into VS PubCo, and VS PubCo will be the surviving corporation of the merger. For further details on the contemplated merger, please see the Form 8-K filed with the Securities and Exchange Commission on April 22, 2021.

## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of  
Horizon Acquisition Corporation

### Opinion on the Financial Statements

We have audited the accompanying balance sheet of Horizon Acquisition Corporation (the “Company”) as of December 31, 2020, the related statements of operations, changes in shareholders’ equity and cash flows for the period from June 12, 2020 (inception) through December 31, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the results of its operations and its cash flows for the period from June 12, 2020 (inception) through December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

### Restatement of Financial Statements

As discussed in Note 2 to the financial statements, the Securities and Exchange Commission issued a public statement entitled *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies* (“SPACs”) (the “Public Statement”) on April 12, 2021, which discusses the accounting for certain warrants as liabilities. The Company previously accounted for its warrants as equity instruments. Management evaluated its warrants against the Public Statement, and determined that the warrants should be accounted for as liabilities. Accordingly, the 2020 financial statements have been restated to correct the accounting and related disclosure for the warrants.

### Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audit. 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting 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.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ WithumSmith+Brown, PC

We have served as the Company’s auditor since 2020.

New York, New York  
May 7, 2021

**HORIZON ACQUISITION CORPORATION**  
**BALANCE SHEET**  
**As Restated - See Note 2**  
**DECEMBER 31, 2020**

<b>Assets</b>	
Current assets:	
Cash	\$ 941,474
Prepaid expenses	333,528
<b>Total current assets</b>	<b>1,275,002</b>
Investments held in Trust Account	544,002,795
<b>Total Assets</b>	<b>\$ 545,277,797</b>
<b>Liabilities and Shareholders' Equity</b>	
Current liabilities:	
Accounts payable	\$ 103,824
Accrued expenses	340,625
<b>Total current liabilities</b>	<b>444,449</b>
Derivative warrant liabilities	35,746,280
Deferred underwriting commissions	13,614,452
<b>Total liabilities</b>	<b>49,805,181</b>
<b>Commitments and Contingencies (Note 6)</b>	
Class A ordinary shares; 49,047,261 shares subject to possible redemption at \$10.00 per share	490,472,610
<b>Shareholders' Equity:</b>	
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued and outstanding	—
Class A ordinary shares, \$0.0001 par value; 400,000,000 shares authorized; 5,351,172 shares issued and outstanding (excluding 49,047,261 shares subject to possible redemption)	535
Class B ordinary shares, \$0.0001 par value; 40,000,000 shares authorized; 13,599,608 shares issued and outstanding	1,360
Additional paid-in capital	22,614,159
Accumulated deficit	(17,616,048)
<b>Total shareholders' equity</b>	<b>5,000,006</b>
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$ 545,277,797</b>

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

**HORIZON ACQUISITION CORPORATION**  
**STATEMENT OF OPERATIONS**  
**As Restated - See Note 2**

**FOR THE PERIOD FROM JUNE 12, 2020 (INCEPTION) THROUGH DECEMBER 31, 2020**

General and administrative expenses	\$ 538,313
Loss from operations	(538,313)
Other income (expense)	
Change in fair value of derivative warrant liabilities	(16,517,250)
Financing cost – derivative warrant liabilities	(578,950)
Net gain from investments held in Trust Account	18,465
<b>Net loss</b>	<b>\$ (17,616,048)</b>
<b>Basic and diluted weighted average shares outstanding of Class A ordinary shares</b>	<b>54,364,337</b>
<b>Basic and diluted net income per share, Class A ordinary shares</b>	<b>\$ 0.00</b>
<b>Basic and diluted weighted average shares outstanding of Class B ordinary shares</b>	<b>13,269,125</b>
<b>Basic and diluted net loss per share, Class B ordinary shares</b>	<b>\$ (1.33)</b>

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



**HORIZON ACQUISITION CORPORATION**  
**STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY**  
**As Restated – See Note 2**

**FOR THE PERIOD FROM JUNE 12, 2020 (INCEPTION) THROUGH DECEMBER 31, 2020**

	Ordinary Shares				Additional Paid-in Capital	Accumulated Deficit	Total Shareholders' Equity
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance - June 12, 2020 (inception)	—	\$ —	—	\$ —	\$ —	\$ —	\$ —
Issuance of Class B ordinary shares to Sponsor	—	—	14,375,000	1,438	23,562	—	25,000
Sale of units in initial public offering, less fair value of public warrants	54,398,433	5,440	—	—	529,835,300	—	529,840,740
Offering costs	—	—	—	—	(21,471,323)	—	(21,471,323)
Excess of cash received over fair value of private placement warrants	—	—	—	—	4,694,247	—	4,694,247
Forfeiture of Class B ordinary shares	—	—	(775,392)	(78)	78	—	—
Shares subject to possible redemption	(49,047,261)	(4,905)	—	—	(490,467,705)	—	(490,472,610)
Net loss	—	—	—	—	—	(17,616,048)	(17,616,048)
Balance December 31, 2020	5,351,172	\$ 535	13,599,608	\$ 1,360	\$ 22,614,159	\$(17,616,048)	\$ 5,000,006

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

**HORIZON ACQUISITION CORPORATION**  
**STATEMENT OF CASH FLOWS**  
**As Restated – See Note 2**

**FOR THE PERIOD FROM JUNE 12, 2020 (INCEPTION) THROUGH DECEMBER 31, 2020**

<b>Cash Flows from Operating Activities:</b>	
Net loss	\$ (17,616,048)
Adjustments to reconcile net loss to net cash used in operating activities:	
General and administrative expenses paid by Sponsor in exchange for issuance of Class B ordinary shares	25,000
Change in fair value of derivative warrant liabilities	16,517,250
Financing cost – derivative warrant liabilities	578,950
Net (gain) loss on investments held in Trust Account	(18,465)
Changes in operating assets and liabilities:	
Accounts payable	18,824
Prepaid expenses	(333,528)
Accrued expenses	340,625
<b>Net cash used in operating activities</b>	<b>(487,392)</b>
<b>Cash Flows from Investing Activities:</b>	
Cash deposited in Trust Account	(543,984,330)
<b>Net cash used in investing activities</b>	<b>(543,984,330)</b>
<b>Cash Flows from Financing Activities:</b>	
Borrowings under note payable to Sponsor	(184,835)
Proceeds received from initial public offering, gross	543,984,330
Proceeds received from private placement	9,779,687
Offering costs paid	(8,165,986)
<b>Net cash provided by financing activities</b>	<b>545,413,196</b>
<b>Net increase in cash</b>	<b>941,474</b>
<b>Cash - beginning of the period</b>	<b>—</b>
<b>Cash - ending of the period</b>	<b>\$ 941,474</b>
<b>Supplemental disclosure of noncash investing and financing activities:</b>	
Offering costs paid through note payable to Sponsor	\$ 184,835
Offering costs included in accrued expenses	\$ 85,000
Forfeiture of Class B ordinary shares	\$ 78
Deferred underwriting commissions	\$ 13,614,452
Initial value of Class A ordinary shares subject to possible redemption	\$ 507,479,670
Change in value of Class A ordinary shares subject to possible redemption	\$ (17,007,060)
Initial fair value of warrant liabilities	\$ 19,229,030

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

**HORIZON ACQUISITION CORPORATION**  
**NOTES TO FINANCIAL STATEMENTS**

**NOTE 1. DESCRIPTION OF ORGANIZATION, BUSINESS OPERATIONS AND BASIS OF PRESENTATION**

***Organization and General***

Horizon Acquisition Corporation, (the “Company”) formerly known as EAC Holdings Inc., is a blank check company incorporated in the Cayman Islands on June 12, 2020. The Company was incorporated for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses that the Company has not yet identified (“initial Business Combination”). Although the Company is not limited to a particular industry or geographic region for purposes of consummating a Business Combination, the Company intends to focus in the financial, technology and business services sectors. The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act of 1933, as amended (the “Securities Act”), as modified by the Jumpstart our Business Startups Act of 2012 (the “JOBS Act”).

As of December 31, 2020, the Company had not yet commenced operations. All activity for the period from June 12, 2020 (inception) through December 31, 2020 relates to the Company’s formation and the initial public offering (the “Initial Public Offering”) described below. The Company will not generate any operating revenues until after the completion of its initial Business Combination, at the earliest. The Company will generate non-operating income in the form of interest income on cash and cash equivalents from the proceeds derived from the Initial Public Offering. The Company has selected December 31 as its fiscal year end.

***Sponsor and Initial Public Offering***

The Company’s sponsor is Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”). The registration statement for the Company’s Initial Public Offering was declared effective on August 20, 2020. On August 25, 2020, the Company consummated its Initial Public Offering of 50,000,000 units (the “Units” and, with respect to the Class A ordinary shares included in the Units, the “Public Shares”), at \$10.00 per Unit, generating gross proceeds of \$500.0 million, and incurring offering costs of approximately \$19.6 million, inclusive of approximately \$12.1 million in deferred underwriting commissions (Note 7). On August 26, 2020, the Company issued an additional 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the exercise by the underwriters of a portion of their over-allotment option, generating additional gross proceeds of approximately \$44.0 million, and incurring additional offering costs of approximately \$2.4 million, inclusive of an additional of approximately \$1.5 million in deferred underwriting commissions.

Simultaneously, with the consummation of the Initial Public Offering, the Company consummated the private placement (the “Private Placement”) of 5,933,333 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating total proceeds of \$8.9 million (Note 5). In connection with the exercise by the underwriters of the over-allotment option, the Sponsor purchased an additional 586,458 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating additional total proceeds of approximately \$0.9 million.

***Trust Account***

Upon the closing of the Initial Public Offering and the Private Placement on August 25, 2020, approximately \$500.0 million (\$10.00 per Unit) of the net proceeds of the Initial Public Offering and certain of the proceeds of the Private Placement was placed in a trust account (“Trust Account”), with Continental Stock Transfer & Trust Company acting as trustee. On August 26, 2020, an additional amount of approximately \$44.0 million, for a total of approximately \$544.0 million was deposited to the Trust Account. The proceeds in the Trust Account are invested in United States “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act having a maturity of 185 days or less or in money market funds meeting certain conditions under

Rule 2a-7 promulgated under the Investment Company Act which invest only in direct U.S. government treasury obligations, as determined by the Company, until the earlier of: (i) the completion of a Business Combination and (ii) the distribution of the Trust Account as described below.

### ***Initial Business Combination***

The Company's management has broad discretion with respect to the specific application of the net proceeds of its Initial Public Offering and the sale of Private Placement Warrants, although substantially all of the net proceeds are intended to be applied generally toward consummating a Business Combination. The Company's initial Business Combination must be with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in the Trust Account (as defined below) (excluding the deferred underwriting commissions and taxes payable on the income earned on the Trust Account) at the time the Company signs a definitive agreement in connection with the initial Business Combination. However, the Company will only complete a Business Combination if the post-transaction company owns or acquires 50% or more of the outstanding voting securities of the target business or otherwise acquires a controlling interest in the target business sufficient for it not to be required to register as an investment company under the Investment Company Act of 1940, as amended, or the Investment Company Act.

The Company will provide the holders of its the Public Shares (the "Public Shareholders") with the opportunity to redeem all or a portion of their Public Shares upon the completion of a Business Combination either (i) in connection with a general meeting called to approve the Business Combination or (ii) by means of a tender offer. The decision as to whether the Company will seek shareholder approval of a Business Combination or conduct a tender offer will be made by the Company. The Public Shareholders will be entitled to redeem their Public Shares for a pro rata portion of the amount then in the Trust Account (initially anticipated to be \$10.00 per share, plus any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay its tax obligations). The per-share amount to be distributed to Public Shareholders who redeem their Public Shares will not be reduced by the deferred underwriting commissions the Company will pay to the underwriters (as discussed in Note 7). These Public Shares have been recorded at a redemption value and classified as temporary equity upon the completion of the Initial Public Offering, in accordance with Accounting Standards Codification ("ASC") Topic 480 "Distinguishing Liabilities from Equity." In such case, the Company will proceed with a Business Combination if the Company has net tangible assets of at least \$5,000,001 upon such consummation of a Business Combination and a majority of the shares voted are voted in favor of the Business Combination. If a shareholder vote is not required by applicable law or stock exchange listing requirements and the Company does not decide to hold a shareholder vote for business or other reasons, the Company will, pursuant to the amended and restated memorandum and articles of association which was adopted by the Company upon the consummation of the Initial Public Offering (the "Amended and Restated Memorandum and Articles of Association"), conduct the redemptions pursuant to the tender offer rules of the U.S. Securities and Exchange Commission (the "SEC"), and file tender offer documents with the SEC prior to completing a Business Combination. If, however, a shareholder approval of the transaction is required by applicable law or stock exchange listing requirements, or the Company decides to obtain shareholder approval for business or other reasons, the Company will offer to redeem shares in conjunction with a proxy solicitation pursuant to the proxy rules and not pursuant to the tender offer rules. Additionally, each Public Shareholder may elect to redeem their Public Shares irrespective of whether they vote for or against the proposed transaction or whether they were a Public Shareholder on the record date for the general meeting held to approve the proposed transaction. If the Company seeks shareholder approval in connection with a Business Combination, the holders of the founder shares prior to this Initial Public Offering (the "Initial Shareholders") have agreed to vote their founder shares (as defined in Note 6) and any Public Shares purchased during or after the Initial Public Offering in favor of a Business Combination. In addition, the Initial Shareholders have agreed to waive their redemption rights with respect to their founder shares and Public Shares in connection with the completion of a Business Combination. In addition, the Company has agreed not to enter into a definitive agreement regarding an initial Business Combination without the prior consent of the Sponsor.

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Notwithstanding the foregoing, the Company's Amended and Restated Memorandum and Articles of Association provides that a Public Shareholder, together with any affiliate of such shareholder or any other person with whom such shareholder is acting in concert or as a "group" (as defined under Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), will be restricted from redeeming its shares with respect to more than an aggregate of 15% or more of the Class A ordinary shares sold in the Initial Public Offering, without the prior consent of the Company.

The Company's Sponsor, officers and directors have agreed not to propose an amendment to the Company's Amended and Restated Memorandum and Articles of Association to either (i) to modify the substance or timing of the Company's obligation to allow the redemption of its Public Shares in connection with a Business Combination or to redeem 100% of its Public Shares if the Company does not complete a Business Combination within 24 months from the closing of the Initial Public Offering or (ii) with respect to any other provisions relating to shareholders' rights or pre-initial business combination activity, unless the Company provides the Public Shareholders with the opportunity to redeem their Class A ordinary shares in conjunction with any such amendment.

If the Company is unable to complete a Business Combination within 24 months from the closing of the Initial Public Offering, or August 25, 2022 (the "Combination Period"), the Company will (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of taxes payable and up to \$100,000 of interest to pay dissolution expenses), divided by the number of then issued and outstanding Public Shares, which redemption will completely extinguish Public Shareholders' rights as shareholders (including the right to receive further liquidation distributions, if any) and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the remaining shareholders and the board of directors, liquidate and dissolve, subject in the case of clauses (ii) and (iii) to the Company's obligations under Cayman Islands law to provide for claims of creditors and in all cases subject to the other requirements of applicable law.

In connection with the redemption of 100% of the Company's outstanding Public Shares for a portion of the funds held in the Trust Account, each holder will receive a full pro rata portion of the amount then in the Trust Account, plus any pro rata interest earned on the funds held in the Trust Account and not previously released to the Company to pay the Company's taxes payable (less taxes payable and up to \$100,000 of interest to pay dissolution expenses).

The Initial Shareholders have agreed to waive their liquidation rights with respect to the founder shares if the Company fails to complete a Business Combination within the Combination Period. However, if the Initial Shareholders should acquire Public Shares in or after the Initial Public Offering, they will be entitled to liquidating distributions from the Trust Account with respect to such Public Shares if the Company fails to complete a Business Combination within the Combination Period. The underwriters have agreed to waive their rights to their deferred underwriting commission (see Note 7) held in the Trust Account in the event the Company does not complete a Business Combination within in the Combination Period and, in such event, such amounts will be included with the funds held in the Trust Account that will be available to fund the redemption of the Company's Public Shares. In the event of such distribution, it is possible that the per share value of the residual assets remaining available for distribution in the Trust Account will be less than the \$10.00 per share initially held in the Trust Account. In order to protect the amounts held in the Trust Account, the Sponsor has agreed that it will be liable to the Company if and to the extent any claims by a third party for services rendered or products sold to the Company, or a prospective target business with which the Company has entered into a written letter of intent, confidentiality or other similar agreement or business combination agreement, reduce the amount of funds in the Trust Account to below the lesser of (i) \$10.00 per public share and (ii) the actual amount per public share held in the trust account as of the date of the liquidation of the Trust Account, if less than \$10.00 per share due to reductions in the value of the trust assets, less taxes payable, provided that such liability will not apply to any claims by a third party or prospective target business who executed a waiver of any and all rights to

the monies held in the Trust Account (whether or not such waiver is enforceable) nor will it apply to any claims under the Company's indemnity of the underwriters of the Initial Public Offering against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). In the event that an executed waiver is deemed to be unenforceable against a third party, the Sponsor will not be responsible to the extent of any liability for such third-party claims. The Company will seek to reduce the possibility that the Sponsor will have to indemnify the Trust Account due to claims of creditors by endeavoring to have vendors, service providers (except the Company's independent registered public accounting firm), prospective target businesses or other entities with which the Company does business, execute agreements with the Company waiving any right, title, interest or claim of any kind in or to monies held in the Trust Account. There can be no guarantee that the Company will be successful in obtaining such waivers from its targeted vendors and service providers.

### ***Basis of presentation***

The accompanying financial statements are presented in U.S. dollars in conformity with accounting principles generally accepted in the United States of America ("GAAP") for financial information and pursuant to the rules and regulations of the SEC.

As described in Note 2—Restatement of Previously Issued Financial Statements, the Company's financial statements as of August 25, 2020, as of and the period from June 12, 2020 (inception) through December 31, 2020, and the unaudited interim financial statements as of, and for the three months ended September 30, 2020 and period from June 12, 2020 (inception) through September 30, 2020 (collectively, the "Affected Periods"), are restated in the Annual Report on Form 10-K/A (Amendment No. 1) (the "Annual Report") to correct the misapplication of accounting guidance related to the Company's warrants in the Company's previously issued audited and unaudited condensed financial statements for such periods. The restated financial statements are indicated as "Restated" in the audited and unaudited condensed financial statements and accompanying notes, as applicable. See Note 2—Restatement of Previously Issued Financial Statements for further discussion.

### ***Emerging growth company***

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised, and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's financial statements with other public companies difficult or impossible because of the potential differences in accounting standards used.

***Liquidity and Capital Resources***

As of December 31, 2020, the Company had approximately \$941,000 outside of the Trust Account and working capital of approximately \$831,000.

The Company's liquidity needs up to December 31, 2020 have been satisfied through (i) the payment of \$25,000 from the Sponsor to cover certain expenses on behalf of the Company in exchange for the issuance of the founder shares, (ii) a loan of approximately \$185,000 from the Sponsor (see Note 6), and (iii) the proceeds from the consummation of the Private Placement, the proceeds of which are not held in the Trust Account. The Company fully repaid the loan from the Sponsor on August 28, 2020. In addition, in order to finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company's officers and directors may, but are not obligated to, provide the Company Working Capital Loans (see Note 6). As of December 31, 2020, there were no amounts outstanding under any Working Capital Loan.

Based on the foregoing, management believes that the Company will have sufficient working capital and borrowing capacity from the Sponsor or an affiliate of the Sponsor, or certain of the Company's officers and directors to meet its needs through the earlier of the consummation of an Initial Business Combination or one year from this filing. Over this time period, the Company will be using these funds for paying existing accounts payable, identifying and evaluating prospective initial business combination candidates, performing due diligence on prospective target businesses, paying for travel expenditures, selecting the target business to merge with or acquire, and structuring, negotiating and consummating the Initial Business Combination.

**NOTE 2. RESTATEMENT OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS**

On April 12, 2021, the staff of the Securities and Exchange Commission (the "SEC Staff") issued a public statement entitled "Staff Statement on Accounting and Reporting Considerations for Warrants issued by Special Purpose Acquisition Companies ("SPACs")" (the "SEC Staff Statement"). In the SEC Staff Statement, the SEC Staff expressed its view that certain terms and conditions common to SPAC warrants may require the warrants to be classified as liabilities on the SPAC's balance sheet as opposed to equity. Since issuance in August 2020, the Company's warrants were accounted for as equity within the Company's previously reported balance sheets. After discussion and evaluation, including with the Company's independent registered public accounting firm and the Company's audit committee, management concluded that the warrants should be presented as liabilities with subsequent fair value remeasurement.

Historically, the Warrants were reflected as a component of equity as opposed to liabilities on the balance sheets and the statements of operations did not include the subsequent non-cash changes in estimated fair value of the Warrants, based on our application of FASB ASC Topic 815-40, Derivatives and Hedging, Contracts in Entity's Own Equity ("ASC 815-40"). The views expressed in the SEC Staff Statement were not consistent with the Company's historical interpretation of the specific provisions within its warrant agreement and the Company's application of ASC 815-40 to the warrant agreement. The Company reassessed its accounting for Warrants issued in August, in light of the SEC Staff's published views. Based on this reassessment, management determined that the Warrants should be classified as liabilities measured at fair value upon issuance, with subsequent changes in fair value reported in the Company's Statement of Operations each reporting period.

Therefore, the Company, in consultation with its Audit Committee, concluded that its previously issued Financial Statements for the Affected Periods should be restated because of a misapplication in the guidance around accounting for certain of our outstanding Warrants to purchase ordinary shares and should no longer be relied upon.

## Impact of the Restatement

The impact of the restatement on the audited consolidated balance sheets, statements of operations and statements of cash flows for the Affected Periods is presented below. The restatement had no impact on net cash flows from operating, investing or financing activities.

	As of December 31, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Balance Sheet</b>			
Total assets	\$545,277,797	\$ —	\$545,277,797
Liabilities and shareholders' equity			
Total current liabilities	\$ 444,449	\$ —	\$ 444,449
Deferred underwriting commissions	13,614,452	—	13,614,452
Derivative warrant liabilities	—	35,746,280	35,746,280
Total liabilities	14,058,901	35,746,280	49,805,181
Class A ordinary shares, \$0.0001 par value; shares subject to possible redemption	526,218,890	(35,746,280)	490,472,610
shareholders' equity			
Preference shares – \$0.0001 par value	—	—	—
Class A ordinary shares – \$0.0001 par value	178	357	535
Class B ordinary shares – \$0.0001 par value	1,360	—	1,360
Additional paid-in-capital	5,518,316	17,095,843	22,614,159
Accumulated deficit	(519,848)	(17,096,200)	(17,616,048)
Total shareholders' equity	5,000,006	—	5,000,006
Total liabilities and shareholders' equity	\$545,277,797	\$ —	\$545,277,797
<b>Statement of Operations</b>			
Loss from operations	\$ (538,313)	\$ —	\$ (538,313)
Other (expense) income:			
Change in fair value of derivative warrant liabilities	—	(16,517,250)	(16,517,250)
Financing cost – derivative warrant liabilities	—	(578,950)	(578,950)
Net gain from investments held in Trust Account	18,465	—	18,465
Total other (expense) income	18,465	(17,096,200)	(17,077,735)
Net loss	\$ (519,848)	\$ (17,096,200)	\$ (17,616,048)
Basic and Diluted weighted-average Class A ordinary shares outstanding	54,364,337		54,364,337
Basic and Diluted net loss per Class A share	\$ 0.00		\$ 0.00
Basic and Diluted weighted-average Class B ordinary shares outstanding	13,269,125		13,269,125
Basic and Diluted net loss per Class B share	\$ (0.04)	\$ (1.29)	\$ (1.33)



	Period From June 12, 2020 (Inception) Through December 31, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Statement of Cash Flows</b>			
Net loss	\$ (519,848)	\$(17,096,200)	\$ (17,616,048)
Adjustment to reconcile net loss to net cash used in operating activities	32,456	17,096,200	17,128,656
Net cash used in operating activities	(487,392)	—	(487,392)
Net cash used in investing activities	(543,984,330)	—	(543,984,330)
Net cash provided by financing activities	545,413,196	—	545,413,196
<b>Net change in cash</b>	<b>\$ 941,474</b>	<b>\$ —</b>	<b>\$ 941,474</b>

In addition, the impact to the balance sheet dated August 25, 2020, filed on Form 8-K on August 31, 2020 is presented below.

	As of August 25, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Balance Sheet</b>			
Total assets	\$ 503,263,387	\$ —	\$503,263,387
Liabilities and shareholders' equity			
Total current liabilities	\$ 1,044,874	\$ —	\$ 1,044,874
Deferred underwriting commissions	12,075,000	—	12,075,000
Derivative warrant liabilities	—	17,628,000	17,628,000
Total liabilities	13,119,874	17,628,000	30,747,874
Class A ordinary shares, \$0.0001 par value; shares subject to possible redemption	485,143,510	(17,628,000)	467,515,510
shareholders' equity			
Preference shares – \$0.0001 par value	—	—	—
Class A ordinary shares – \$0.0001 par value	149	176	325
Class B ordinary shares – \$0.0001 par value	1,380	—	1,380
Additional paid-in-capital	5,028,513	578,774	5,607,287
Accumulated deficit	(30,039)	(578,950)	(608,989)
Total shareholders' equity	5,000,003	—	5,000,003
Total liabilities and shareholders' equity	\$ 503,263,387	\$ —	\$503,263,387

For the impact of the restatement of the quarterly interim period (unaudited) of September 30, 2020, see Note 12.

### NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### *Use of estimates*

The preparation of the financial statements in conformity with U.S. GAAP requires the Company's management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date the financial statements and the reported amounts of expenses during the reporting periods. Actual results could differ from those estimates.

Making estimates requires management to exercise significant judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, the actual results could differ significantly from those estimates.

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

The Company considers all short-term investments with an original maturity of three months or less when purchased to be cash equivalents. There were no cash equivalents at December 31, 2020.

### ***Concentration of credit risk***

Financial instruments that potentially subject the Company to concentration of credit risk consist of cash accounts in a financial institution which, at times, may exceed the Federal depository insurance coverage of \$250,000, and investments held in Trust Account. The Company has not experienced losses on these accounts and management believes the Company is not exposed to significant risks on such accounts. The Company's investments held in the Trust Account as of December 31, 2020 is comprised of investments in U.S. Treasury securities with an original maturity of 185 days or less or investments in a money market funds that comprise only U.S. treasury securities money market funds.

### ***Investments Held in the Trust Account***

The Company's portfolio of investments held in the Trust Account is comprised of U.S. government securities, within the meaning set forth in Section 2(a)(16) of the Investment Company Act, with a maturity of 185 days or less, or investments in money market funds that invest in U.S. government securities, or a combination thereof. The Company's investments held in the Trust Account are classified as trading securities. Trading securities are presented on the balance sheets at fair value at the end of each reporting period. Gains and losses resulting from the change in fair value of these securities is included in net gain on investments held in Trust Account in the accompanying statement of operations. The estimated fair values of investments held in the Trust Account are determined using available market information.

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

Fair value is defined as the price that would be received for sale of an asset or paid for transfer of a liability, in an orderly transaction between market participants at the measurement date. GAAP establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). These tiers include:

- Level 1, defined as observable inputs such as quoted prices (unadjusted) for identical instruments in active markets;
- Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable such as quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active; and
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, such as valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

In some circumstances, the inputs used to measure fair value might be categorized within different levels of the fair value hierarchy. In those instances, the fair value measurement is categorized in its entirety in the fair value hierarchy based on the lowest level input that is significant to the fair value measurement.

As of December 31, 2020, the carrying values of cash, prepaid expenses accounts payable and accrued expenses approximate their fair values due to the short-term nature of the instruments. The Company's investments held in Trust Account are comprised of investments in U.S. government securities with an original maturity of 185 days or less or investments in a money market funds that invest in only U.S. government securities and are recognized at fair value. The fair value of investments held in Trust Account is determined using quoted prices in active markets.

The fair value of warrants issued in connection with the Initial Public Offering, exercise of the over-allotment option and Private Placement were initially and subsequently measured at fair value using a Monte Carlo simulation model. Beginning as of December 31, 2020, the fair value of Public Warrants have been measured based on the listed market price of such Public Warrants. The Private Placement Warrants continue to be measured at fair value using a Monte Carlo simulation model through December 31, 2020.

#### ***Offering Costs Associated with Initial Public Offering***

Offering costs consist of legal, accounting, underwriting fees and other costs incurred through the balance sheet date that are directly related to the Initial Public Offering. Offering costs are allocated to the separable financial instruments issued in the Initial Public Offering based on a relative fair value basis, compared to total proceeds received. Offering costs associated with warrant liabilities are expensed as incurred and presented as non-operating expenses in the statement of operations. Offering costs associated with the Public Shares were charged to shareholders' equity. Of the total offering costs of the Initial Public Offering, approximately \$0.6 million is included in financing cost—derivative warrant liabilities in the statement of operations and \$21.5 million is included in stockholders' equity.

#### ***Class A Ordinary Shares Subject to Possible Redemption***

Class A ordinary shares subject to mandatory redemption (if any) are classified as liability instruments and are measured at fair value. Conditionally redeemable Class A ordinary shares (including Class A ordinary shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within the Company's control) are classified as temporary equity. At all other times, Class A ordinary shares are classified as shareholders' equity. The Company's Class A ordinary shares feature certain redemption rights that are considered to be outside of the Company's control and subject to the occurrence of uncertain future events. Accordingly, as of December 31, 2020, 49,047,261 shares of Class A ordinary shares subject to possible redemption are presented as temporary equity, outside of the shareholders' equity section of the balance sheet.

#### ***Derivative Warrant liabilities***

The Company did not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. Management evaluates all of its financial instruments, including issued warrants to purchase Class A ordinary shares, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480 and ASC 815-15. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is re-assessed at the end of each reporting period.

The Company issued an aggregate of 18,132,811 warrants on Class A ordinary shares in the Initial Public Offering and upon the underwriters' exercise of a portion of their over-allotment option, and issued 6,519,791 Private Placement Warrants. All of the Company's outstanding warrants are recognized as derivative liabilities in accordance with ASC 815-40. Accordingly, the Company recognized the warrant instruments as liabilities at fair value and adjusted the instruments to fair value at each reporting period.

The liabilities are subject to re-measurement at each balance sheet date until exercised, and any change in fair value is recognized in the Company's statement of operations. The fair value of warrants issued in connection with the Initial Public Offering, exercise of the over-allotment option and Private Placement were initially and subsequently measured at fair value using a Monte Carlo simulation model. Beginning as of December 31, 2020, the fair value of Public Warrants have been measured based on the listed market price of such Public Warrants. The Private Placement Warrants continue to be measured at fair value using a Monte Carlo simulation model through December 31, 2020.

### ***Net Income (loss) per Ordinary Share***

Net loss per share is computed by dividing net income (loss) by the weighted average number of ordinary shares outstanding during the period, excluding ordinary shares subject to forfeiture. The Company has not considered the effect of the warrants sold in the Initial Public Offering and Private Placement to purchase an aggregate of 24,652,602 shares of Class A ordinary shares in the calculation of diluted earnings per share, since their inclusion would be anti-dilutive under the treasury stock method. As a result, diluted loss per share is the same as basic loss per share for the periods presented.

The Company's statement of operations includes a presentation of income per share for Class A ordinary shares subject to redemption in a manner similar to the two-class method of income per share. Net income per share, basic and diluted, for Class A ordinary shares is calculated by dividing the investment income earned on the Trust Account of approximately \$18,000 for the period from June 12, 2020 (inception) through December 31, by the weighted average number of shares of Class A ordinary shares outstanding for the period. Net loss per share, basic and diluted, for Class B ordinary shares is calculated by dividing the net loss of approximately \$17.6 million for the period from June 12, 2020 (inception) through December 31, 2020, less income attributable to Class A ordinary shares, by the weighted average number of shares of Class B ordinary shares outstanding for the period.

### ***Income taxes***

FASB ASC Topic 740 prescribes a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. There were no unrecognized tax benefits as of December 31, 2020. The Company's management determined that the Cayman Islands is the Company's only major tax jurisdiction. The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. No amounts were accrued for the payment of interest and penalties as of December 31, 2020. The Company is currently not aware of any issues under review that could result in significant payments, accruals or material deviation from its position. The Company is subject to income tax examinations by major taxing authorities since inception.

There is currently no taxation imposed on income by the Government of the Cayman Islands. In accordance with Cayman Islands income tax regulations, income taxes are not levied on the Company. Consequently, income taxes are not reflected in the Company's financial statements. The Company's management does not expect that the total amount of unrecognized tax benefits will materially change over the next twelve months.

### ***Recent accounting pronouncements***

Management does not believe that any recently issued, but not yet effective, accounting pronouncements, if currently adopted, would have a material effect on the Company's financial statements.

## **NOTE 4. INITIAL PUBLIC OFFERING**

On August 25, 2020, the Company consummated its Initial Public Offering of 50,000,000 Units, at \$10.00 per Unit, generating gross proceeds of \$500.0 million, and incurring offering costs of approximately \$19.6 million, inclusive of approximately \$12.1 million in deferred underwriting commissions. The Sponsor purchased 15,500,000 Units (the "Affiliated Units") at the Initial Public Offering price. The underwriters did not receive any underwriting discounts or commissions on the Affiliated Units.

On August 26, 2020, the Company issued an additional of 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the exercise by the underwriters of a portion of their over-allotment option, generating additional gross proceeds of approximately \$44.0 million, and incurring additional offering costs of approximately \$2.4 million, inclusive of an additional of approximately \$1.5 million in deferred underwriting commissions.

Each Unit will consist of one Class A ordinary share and one-third of one redeemable warrant (“Public Warrant”). Each whole Public Warrant will entitle the holder to purchase one Class A ordinary share at an exercise price of \$11.50 per share, subject to adjustment (see Note 8).

#### **NOTE 5. PRIVATE PLACEMENT**

As a result of the purchase of the Affiliated Units by the Sponsor, the number of Private Placement Warrants purchased by the Sponsor was reduced to account for the corresponding reduction in underwriting discounts payable upon completion the Initial Public Offering. On August 25, 2020, simultaneous with the consummation of the Initial Public Offering, the Company consummated the Private Placement of 5,933,333 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating total proceeds of \$8.9 million. In connection with the partial exercise of the over-allotment option, the Sponsor purchased an additional 586,458 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant, generating additional total proceeds of approximately \$0.9 million. A portion of the proceeds from the sale of the Private Placement Warrants to the Sponsor was added to the proceeds from the Initial Public Offering held in the Trust Account.

Each whole Private Placement Warrant is exercisable for one whole Class A ordinary share at a price of \$11.50 per share. If the Company does not complete a Business Combination within the Combination Period, the Private Placement Warrants will expire worthless. The Private Placement Warrants are non-redeemable except as described below in Note 8 and exercisable on a cashless basis so long as they are held by the Sponsor or its permitted transferees.

The Sponsor and the Company’s officers and directors agreed, subject to limited exceptions, not to transfer, assign or sell any of their Private Placement Warrants until 30 days after the completion of the initial Business Combination.

#### **NOTE 6. RELATED PARTY TRANSACTIONS**

##### ***Founder Shares***

On July 2, 2020, the Sponsor paid an aggregate of \$25,000 for certain expenses on behalf of the Company in exchange for issuance of 14,375,000 Class B ordinary shares (the “founder shares”). The Sponsor agreed to forfeit up to an aggregate of 1,875,000 founder shares to the extent that the option to purchase additional units was not exercised in full by the underwriters or was reduced, so that the founder shares would represent 20% of the Company’s issued and outstanding shares after the Initial Public Offering. On August 25, 2020, in connection with the purchase of the Affiliated Units, the Sponsor surrendered 581,250 founder shares to the Company for no consideration. On August 26, 2020, the underwriters partially exercised their over-allotment option, which resulted in 1,099,608 founder shares no longer being subject to forfeiture. On October 4, 2020, 194,142 shares were forfeited as the remainder of the over-allotment option expired unexercised. As a result, as of December 31, 2020, no remaining Class B ordinary shares were subject to forfeiture.

The Initial Shareholders agreed not to transfer, assign or sell any of their founder shares until the earlier to occur of: (i) one year after the completion of the initial Business Combination or earlier if, subsequent to the initial Business Combination, the closing price of the Class A ordinary shares equals or exceeds \$12.00 per share (as adjusted for share sub-divisions, capitalization of shares, share dividends, rights issuances, subdivisions reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the initial Business Combination, and (ii) the date following the completion of the initial Business Combination on which the Company completes a liquidation, merger, share exchange or other similar transaction that results in all of the Company’s shareholders having the right to exchange their Class A ordinary shares for cash, securities or other property.

### ***Related Party Loans***

On July 2, 2020, the Sponsor agreed to loan the Company up to \$300,000 to be used for the payment of costs related to the Initial Public Offering pursuant to a promissory note (the “Note”). The Note is non-interest bearing, unsecured and due upon the closing of the Initial Public Offering. The Company borrowed approximately \$185,000 under the Note, and fully repaid this balance on August 28, 2020.

In addition, in order to fund working capital deficiencies or finance transaction costs in connection with a Business Combination, the Sponsor or an affiliate of the Sponsor, or certain of the Company’s officers and directors may, but are not obligated to, loan the Company funds as may be required (“Working Capital Loans”). If the Company completes a Business Combination, the Company may repay the Working Capital Loans out of the proceeds of the Trust Account released to the Company. Otherwise, the Working Capital Loans may be repaid only out of funds held outside the Trust Account. In the event that a Business Combination does not close, the Company may use a portion of proceeds held outside the Trust Account to repay the Working Capital Loans but no proceeds held in the Trust Account would be used to repay the Working Capital Loans. The Working Capital Loans would either be repaid upon consummation of a Business Combination, without interest, or, at the lenders’ discretion, up to \$1.5 million of such Working Capital Loans may be convertible into warrants of the post Business Combination entity at a price of \$1.50 per warrant. The warrants would be identical to the Private Placement Warrants. Except for the foregoing, the terms of such Working Capital Loans, if any, have not been determined and no written agreements exist with respect to such loans. As of December 31, 2020, the Company had no borrowings under the Working Capital Loans.

### ***Administrative Support Agreement***

The Company agreed to pay the Sponsor a total of \$10,000 per month, commencing on the date of listing on the NYSE, for office space, utilities, secretarial and administrative support services provided to members of the management team. Upon completion of the initial Business Combination or the Company’s liquidation, the Company will cease paying these monthly fees. From the date the securities were first listed on the NYSE through December 31, 2020, the Sponsor waived the fee.

In addition, the Sponsor, officers and directors, or any of their respective affiliates will be reimbursed for any out-of-pocket expenses incurred in connection with activities on the Company’s behalf such as identifying potential target businesses and performing due diligence on suitable Business Combinations. The Audit Committee of the Board of Directors will review on a quarterly basis all payments that are made by the Company to the Sponsor, officers or directors, or their affiliates. Any such payments prior to an initial Business Combination will be made from funds held outside the Trust Account.

## **NOTE 7. COMMITMENTS AND CONTINGENCIES**

### ***Registration and Shareholder Rights***

The holders of the founder shares, Private Placement Warrants and warrants that may be issued upon conversion of Working Capital Loans (and any Class A ordinary shares issuable upon the exercise of the Private Placement Warrants and warrants that may be issued upon conversion of Working Capital Loans) are entitled to registration rights pursuant

to a registration and shareholder rights agreement. The holders of these securities are entitled to make up to three demands, excluding short form demands, that the Company register such securities. In addition, the holders have certain “piggy-back” registration rights with respect to registration statements filed subsequent to the completion of the initial Business Combination. The Company will bear the expenses incurred in connection with the filing of any such registration statements.

### ***Underwriting Agreement***

The Company granted the underwriters a 45-day option, from August 20, 2020, the date of the final prospectus related to the initial public offering, to purchase up to 7,500,000 additional Units at the Initial Public Offering price less the underwriting discounts and commissions. On August 26, 2020, the Company issued an additional of 4,398,433 Units at the Initial Public Offering price at \$10.00 per Unit pursuant to the partial exercise of the underwriters' over-allotment option.

The underwriters were entitled to an underwriting discount of \$0.20 per unit, or \$6.9 million in the aggregate, paid upon the closing of the Initial Public Offering. In addition, \$0.35 per unit, or approximately \$12.1 million in the aggregate will be payable to the underwriters for deferred underwriting commissions. The deferred fee will become payable to the underwriters from the amounts held in the Trust Account solely in the event that the Company completes a Business Combination, subject to the terms of the underwriting agreement.

In connection with the consummation of the sale of Units pursuant to the over-allotment option on August 26, 2020, the underwriters were entitled to an additional fee of approximately \$0.9 million paid upon closing and an additional deferred underwriting commissions of approximately \$1.5 million.

### ***Risks and Uncertainties***

Management continues to evaluate the impact of the COVID-19 pandemic and has concluded that, while it is reasonably possible that the virus could have a negative effect on the Company's financial position, results of its operations, and/or search for a target company, the specific impact is not readily determinable as of the date of these financial statements. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **NOTE 8. DERIVATIVE WARRANT LIABILITIES**

As of December 31, 2020, the Company had 18,132,811 and 6,519,791 Public Warrants and Private Placement Warrants, respectively, outstanding.

Public Warrants may only be exercised for a whole number of shares. No fractional Public Warrants will be issued upon separation of the Units and only whole Public Warrants will trade. The Public Warrants will become exercisable on the later of (a) 30 days after the completion of an initial Business Combination and (b) 12 months from the closing of the Initial Public Offering; provided in each case that the Company has an effective registration statement under the Securities Act covering the Class A ordinary shares issuable upon exercise of the Public Warrants and a current prospectus relating to them is available and such shares are registered, qualified or exempt from registration under the securities, or blue sky, laws of the state of residence of the holder (or the Company permit holders to exercise their warrants on a cashless basis under certain circumstances). The Company has agreed that as soon as practicable, but in no event later than 15 business days after the closing of the initial Business Combination, the Company will use commercially reasonable efforts to file with the SEC a registration statement covering the Class A ordinary shares issuable upon exercise of the warrants and to maintain a current prospectus relating to those Class A ordinary shares until the warrants expire or are redeemed, as specified in the warrant agreement. If a registration statement covering the Class A ordinary shares issuable upon exercise of the warrants is not effective by the 60th day after the closing of the initial Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company will have failed to maintain an effective registration statement, exercise warrants on a "cashless basis" in accordance with Section 3(a)(9) of the Securities Act or another exemption. Notwithstanding the above, if the Class A ordinary shares are at the time of any exercise of a warrant not listed on a national securities exchange such that they satisfy the definition of a "covered security" under Section 18(b)(1) of the Securities Act, the Company may, at its option, require holders of Public Warrants who exercise their warrants to do so on a "cashless basis" and, in the event the Company so elects, the Company will not be required to file or

maintain in effect a registration statement, and in the event the Company does not so elect, it will use commercially reasonable efforts to register or qualify the shares under applicable blue sky laws to the extent an exemption is not available.

The warrants have an exercise price of \$11.50 per share, subject to adjustments, and will expire five years after the completion of the initial Business Combination or earlier upon redemption or liquidation. In addition, if (x) the Company issues additional Class A ordinary shares or equity-linked securities for capital raising purposes in connection with the closing of the initial Business Combination at an issue price or effective issue price of less than \$9.20 per Class A ordinary share (with such issue price or effective issue price to be determined in good faith by the board of directors and, in the case of any such issuance to the Initial Shareholders or their affiliates, without taking into account any founder shares held by the Initial Shareholders or such affiliates, as applicable, prior to such issuance) (the “Newly Issued Price”), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of the initial Business Combination on the date of the consummation of the initial Business Combination (net of redemptions), and (z) the volume weighted average trading price of Class A ordinary shares during the 10-trading day period starting on the trading day prior to the day on which the Company consummates its initial Business Combination (such price, the “Market Value”) is below \$9.20 per share, then the exercise price of the warrants will be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, the \$18.00 per share redemption trigger price will be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price, and the \$10.00 per share redemption trigger price will be adjusted (to the nearest cent) to be equal to the higher of the Market Value and the Newly Issued Price See “— Redemption of warrants when the price per class A ordinary share equals or exceeds \$18.00” and “— Redemption of warrants when the price per class A ordinary share equals or exceeds \$10.00” as described below.

The Private Placement Warrants are identical to the Public Warrants underlying the Units sold in the Initial Public Offering, except (i) that the Private Placement Warrants and the Class A ordinary shares issuable upon exercise of the Private Placement Warrants will not be transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions, (ii) except as described below, the Private Placement Warrants will be non-redeemable so long as they are held by the Sponsor or such its permitted transferees and (iii) the Sponsor or its permitted transferees will have the option to exercise the Private Placement Warrants on a cashless basis and have certain registration rights. If the Private Placement Warrants are held by someone other than the Sponsor or its permitted transferees, the Private Placement Warrants will be redeemable by the Company in all redemption scenarios and exercisable by such holders on the same basis as the Public Warrants.

*Redemption of warrants when the price per Class A ordinary share equals or exceeds \$18.00:* Once the warrants become exercisable, the Company may call the outstanding warrants for redemption (except as described herein with respect to the Private Placement Warrants):

- in whole and not in part;
- at a price of \$0.01 per warrant;
- upon a minimum of 30 days’ prior written notice of redemption to each warrant holder; and
- if, and only if, the last reported sale price (the “closing price”) of Class A ordinary shares equals or exceeds \$18.00 per share (as adjusted) for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders.

*Redemption of warrants when the price per Class A ordinary share equals or exceeds \$10.00:* Once the warrants become exercisable, the Company may call the outstanding warrants for redemption (except as described herein with respect to the Private Placement Warrants):

- in whole and not in part;



- at \$0.10 per warrant upon a minimum of 30 days' prior written notice of redemption provided that holders will be able to exercise their warrants on a cashless basis prior to redemption and receive that number of Class A ordinary shares to be determined by reference to an agreed table based on the redemption date and the "fair market value" of Class A ordinary shares;
- if, and only if, the closing price of Class A ordinary shares equals or exceeds \$10.00 per share (as adjusted) for any 20 trading days within the 30-trading day period ending three trading days before the Company sends the notice of redemption to the warrant holders; and
- if the closing price of the Class A ordinary shares for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders is less than \$18.00 per share (as adjusted), the Private Placement Warrants must also be concurrently called for redemption on the same terms as the outstanding Public Warrants, as described above.

The "fair market value" of Class A ordinary shares for the above purpose shall mean the volume weighted average price of Class A ordinary shares during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of warrants. In no event will the warrants be exercisable on a cashless basis in connection with this redemption feature for more than 0.361 Class A ordinary shares per warrant (subject to adjustment).

In no event will the Company be required to net cash settle any warrant. If the Company is unable to complete a Business Combination within the Combination Period and the Company liquidates the funds held in the Trust Account, holders of warrants will not receive any of such funds with respect to their warrants, nor will they receive any distribution from the Company's assets held outside of the Trust Account with the respect to such warrants. Accordingly, the warrants may expire worthless.

#### NOTE 9. SHAREHOLDERS' EQUITY

**Class A Ordinary Shares** — The Company is authorized to issue 400,000,000 Class A ordinary shares with a par value of \$0.0001 per share. Holders of the Company's Class A ordinary shares are entitled to one vote for each share. As of December 31, 2020, there were 54,398,433 Class A ordinary shares issued and outstanding, including 49,047,261 Class A ordinary shares subject to possible redemption and have been reflected as temporary equity on the balance sheet.

**Class B Ordinary Shares** — The Company is authorized to issue 40,000,000 Class B ordinary shares with a par value of \$0.0001 per share. On July 2, 2020, the Company issued 14,375,000 Class B ordinary shares, of which an aggregate of up to 1,875,000 Class B ordinary shares were subject to forfeiture to the Company by the Initial Shareholders for no consideration to the extent that the underwriters' over-allotment option is not exercised in full or in part, so that the Initial Shareholders would collectively own 20% of the Company's issued and outstanding ordinary shares after the Initial Public Offering. On August 25, 2020, in connection with the purchase of the Affiliated Units, the Sponsor surrendered 581,250 founder shares to the Company for no consideration. On August 26, 2020, the underwriters partially exercised their over-allotment option, which resulted in 1,099,608 founder shares no longer being subject to forfeiture. As a result, 194,142 Class B ordinary shares were subject to forfeiture. On October 4, 2020, these shares were forfeited as the remainder of the over-allotment option expired unexercised. As of December 31, 2020, there were 13,599,608 Class B ordinary shares outstanding, and no shares were subject to forfeiture.

Ordinary shareholders of record are entitled to one vote for each share held on all matters to be voted on by shareholders and holders of Class A ordinary shares and holders of Class B ordinary shares will vote together as a single class on all matters submitted to a vote of the shareholders except as required by law; provided that only holders of Class B ordinary shares will have the right to vote on the appointment of directors prior to, or in connection with, the completion of the initial Business Combination.

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The Class B ordinary shares will automatically convert into Class A ordinary shares at the time of the consummation of the initial Business Combination on a one-for-one basis, subject to adjustment for share sub-divisions, share capitalizations, reorganizations, recapitalizations and the like, and subject to further adjustment. In the case that additional Class A ordinary shares or equity-linked securities are issued or deemed issued in connection with the initial Business Combination, the number of Class A ordinary shares issuable upon conversion of all founder shares will equal, in the aggregate, on an as-converted basis, 20% of the total number of Class A ordinary shares outstanding after such conversion (after giving effect to any redemptions of Class A ordinary shares by Public Shareholders), including the total number of Class A ordinary shares issued, or deemed issued or issuable upon conversion or exercise of any equity-linked securities or rights issued or deemed issued, by the Company in connection with or in relation to the consummation of the initial Business Combination, excluding any Class A ordinary shares or equity-linked securities exercisable for or convertible into Class A ordinary shares issued, or to be issued, to any seller in the initial Business Combination and any Private Placement Warrants issued upon conversion of Working Capital Loans; provided that such conversion of founder shares will never occur on a less than one-for-one basis.

**Preference Shares** — The Company is authorized to issue 1,000,000 preference with such designations, voting and other rights and preferences as may be determined from time to time by the Company's board of directors. As of December 31, 2020, there were no preference shares issued or outstanding.

### NOTE 10. FAIR VALUE MEASUREMENTS

The following table presents information about the Company's financial assets and financial liabilities that are measured at fair value on a recurring basis as of December 31, 2020 by level within the fair value hierarchy:

<u>Description</u>	<u>Quoted Prices in Active Markets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Other Unobservable Inputs (Level 3)</u>
<b>Assets:</b>			
Investments held in Trust Account	\$544,002,795	\$ —	\$ —
<b>Liabilities:</b>			
Derivative warrant liabilities - Public	\$ 26,292,580	\$ —	\$ —
Derivative warrant liabilities - Private	\$ —	\$ —	\$ 9,453,700

Transfers to/from Levels 1, 2, and 3 are recognized at the end of the reporting period. The estimated fair value of the Public Warrants transferred from a Level 3 measurement to a Level 1 fair value measurement in October 2020, when the Public Warrants were separately listed and traded. Level 1 instruments include investments in government securities. The Company uses inputs such as actual trade data, benchmark yields, quoted market prices from dealers or brokers, and other similar sources to determine the fair value of its investments.

The fair value of the Public Warrants issued in connection with the Public Offering and Private Placement Warrants were initially measured at fair value using a Monte Carlo simulation model and subsequently through September 30, 2020. The fair value of Public Warrants issued in connection with the Initial Public Offering have been measured based on the listed market price of such warrants, a Level 1 measurement, since October 2020. The Private Placement Warrants continue to be measured at fair value using a Monte Carlo simulation model through December 31, 2020. For the period ended December 31, 2020, the Company recognized a charge to the statement of operations resulting from an increase in the fair value of liabilities of approximately \$16.5 million presented as change in fair value of derivative warrant liabilities on the accompanying statement of operations.

The estimated fair value of the Public Warrants prior to being separately listed and traded, and the Private Placement Warrants were determined using Level 3 inputs. Inherent in a Monte Carlo simulation are assumptions related to expected share-price volatility, expected life, risk-free interest rate and dividend yield. The Company

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estimates the volatility of its ordinary shares warrants based on implied volatility from the Company's traded warrants and from historical volatility of select peer company's ordinary shares that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates remaining at zero.

The following table provides quantitative information regarding Level 3 fair value measurements inputs at the initial measurement date:

	As of August 25, 2020	As of December 31, 2020
Volatility	15.0%	22.1%
Share price	\$ 9.74	\$ 10.02
Risk-free rate	0.53%	0.36%
Dividend yield	0.0%	0.0%

The change in the fair value of the derivative warrant liabilities for the period from June 12, 2020 (inception) through December 31, 2020 is summarized as follows:

Warrant liabilities at June 12, 2020 (inception)	\$ —
Issuance of Public and Private Warrants	19,229,030
Change in fair value of warrant liabilities	16,517,250
Warrant liabilities at December 31, 2020	<u>\$ 35,746,280</u>

## NOTE 11. SUBSEQUENT EVENTS

The Company evaluated events that have occurred after the balance sheet date up to the date that the financial statements were issued. Based upon this review, other than the event disclosed below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements which have not previously been disclosed within the financial statements.

On April 21, 2021, the Company entered into a Transaction Agreement with Hoya Topco, LLC ("Topco"), a Delaware limited liability company, Hoya Intermediate, LLC ("Intermediate"), a Delaware limited liability company, and Vivid Seats Inc. ("VS PubCo"), a Delaware corporation and a direct wholly owned subsidiary of Intermediate, pursuant to which the Company will merge with and into VS PubCo, and VS PubCo will be the surviving corporation of the merger. For further details on the contemplated merger, please see the Form 8-K filed with the Securities and Exchange Commission on April 22, 2021.

## NOTE 12. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

The following tables contain unaudited consolidated quarterly financial information for the quarterly period ended September 30, 2020 that has been updated to reflect the restatement and revision of the Company's consolidated financial statements as described in Note 2—Restatement of Previously Issued Financial Statements. The restatement did not have any impact on the Company's liquidity, cash flows, revenues or costs of operating its business. The Company has not amended its previously filed Quarterly Report on Form 10-Q for the Affected Period. The financial information that has been previously filed or otherwise reported for the Affected Period is

superseded by the information in the Annual Report, and the financial statements and related financial information for the Affected Period contained in such previously filed report should no longer be relied upon.

	As of September 30, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Balance Sheet</b>			
Total assets	\$545,356,337	\$ —	\$545,356,337
Liabilities and shareholders' equity			
Total current liabilities	\$ 144,624	\$ —	\$ 144,624
Deferred underwriting commissions	13,614,452	—	13,614,452
Derivative warrant liabilities	—	35,253,220	35,253,220
Total liabilities	13,759,076	35,253,220	49,012,296
Class A ordinary shares, \$0.0001 par value; shares subject to possible redemption	526,597,260	(35,253,220)	491,344,040
shareholders' equity			
Preference shares - \$0.0001 par value	—	—	—
Class A ordinary shares - \$0.0001 par value	174	352	526
Class B ordinary shares - \$0.0001 par value	1,379	—	1,379
Additional paid-in-capital	5,139,931	16,602,788	21,742,719
Accumulated deficit	(141,483)	(16,603,140)	(16,744,623)
Total shareholders' equity	5,000,001	—	5,000,001
Total liabilities and shareholders' equity	\$545,356,337	\$ —	\$545,356,337
<b>Three Months Ended September 30, 2020</b>			
	As Previously Reported	Restatement Adjustment	As Restated
<b>Unaudited Condensed Statement of Operations</b>			
Loss from operations	\$ (126,442)	\$ —	\$ (126,442)
Other (expense) income:			
Change in fair value of derivative warrant liabilities	—	(16,024,190)	(16,024,190)
Financing cost - derivative warrant liabilities	—	(578,950)	(578,950)
Net gain from investments held in Trust Account	2,139	—	2,139
Total other (expense) income	2,139	(16,603,140)	(16,601,001)
Net loss	\$ (124,303)	\$ (16,603,140)	\$ (16,727,443)
Basic and Diluted weighted-average Class A ordinary shares outstanding	54,279,556		54,279,556
Basic and Diluted net loss per Class A share	\$ —		\$ 0.00
Basic and Diluted weighted-average Class B ordinary shares outstanding	12,935,010		12,935,010
Basic and Diluted net loss per Class B share	\$ (0.01)	\$ (1.28)	\$ (1.29)

	Period From June 12, 2020 (Inception) Through September 30, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Unaudited Condensed Statement of Operations</b>			
Loss from operations	\$ (143,622)	\$ —	\$ (143,622)
Other (expense) income:			
Change in fair value of warrant liabilities	—	(16,024,190)	(16,024,190)
Financing cost	—	(578,950)	(578,950)
Net gain from investments held in Trust Account	2,139	—	2,139
Total other (expense) income	2,139	(16,603,140)	(16,601,001)
Net loss	\$ (141,483)	\$ (16,603,140)	\$ (16,744,623)
Basic and Diluted weighted-average Class A ordinary shares outstanding	54,279,556		54,279,556
Basic and Diluted net loss per Class A share	\$ —		\$ —
Basic and Diluted weighted-average Class B ordinary shares outstanding	12,935,010		12,935,010
Basic and Diluted net loss per Class B share	\$ (0.01)	\$ (1.28)	\$ (1.29)

	Period From June 12, 2020 (Inception) Through September 30, 2020		
	As Previously Reported	Restatement Adjustment	As Restated
<b>Unaudited Condensed Statement of Cash Flows</b>			
Net loss	\$ (141,483)	\$ (16,603,140)	\$ (16,744,623)
Adjustment to reconcile net loss to net cash used in operating activities	(307,061)	16,603,140	16,296,079
Net cash used in operating activities	(448,544)	—	(448,544)
Net cash used in investing activities	(543,986,470)	—	(543,986,470)
Net cash provided by financing activities	545,413,196	—	545,413,196
<b>Net change in cash</b>	<b>\$ 978,182</b>	<b>\$ —</b>	<b>\$ 978,182</b>

**HOYA INTERMEDIATE, LLC**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except unit data) (Unaudited)

	December 31, 2020	March 31, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 285,337	\$ 312,769
Accounts receivable – net	35,250	37,093
Inventory – net	7,462	8,882
Prepaid expenses and other current assets	80,066	81,464
<b>Total current assets</b>	<b>408,115</b>	<b>440,208</b>
Intangible assets – net	67,024	68,455
Goodwill	683,327	683,327
Other non-current assets	664	342
<b>Total assets</b>	<b>\$ 1,159,130</b>	<b>\$ 1,192,332</b>
<b>Liabilities and members' deficit</b>		
Current liabilities:		
Accounts payable	\$ 62,769	\$ 100,626
Accrued expenses and other current liabilities	256,134	257,298
Deferred revenue	5,956	8,962
Current maturities of long-term debt – net	6,412	6,412
<b>Total current liabilities</b>	<b>331,271</b>	<b>373,298</b>
Long-term debt – net	870,903	881,008
Other liabilities	510	497
<b>Total long-term liabilities</b>	<b>871,413</b>	<b>881,505</b>
<b>Commitments and contingencies (Note 10)</b>		
<b>Redeemable Preferred Units</b>		
Redeemable Senior Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at December 31, 2020 and March 31, 2021 (aggregate involuntary liquidation preference of \$214,008 and \$220,696 at December 31, 2020 and March 31, 2021, respectively)	218,288	225,110
Redeemable Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at December 31, 2020 and March 31, 2021	9,939	9,939
<b>Members' equity (deficit)</b>		
Common Units - \$0 par value; unlimited authorized, 100 units issued and outstanding at December 31, 2020 and March 31, 2021	—	—
Additional paid-in capital	755,716	749,985
Accumulated deficit	(1,026,675)	(1,046,926)
Accumulated other comprehensive loss	(822)	(579)
Total members' equity (deficit)	(271,781)	(297,520)
<b>Total liabilities, redeemable preferred units, and members' equity (deficit)</b>	<b>\$ 1,159,130</b>	<b>\$ 1,192,332</b>

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

**HOYA INTERMEDIATE, LLC**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(in thousands except unit and per unit data) (Unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2021</b>
Revenues	\$ 69,661	\$ 24,114
<b>Costs and expenses:</b>		
Cost of revenues (exclusive of depreciation and amortization shown separately below)	19,868	3,496
Marketing and selling	31,947	7,955
General and administrative	23,159	16,300
Depreciation and amortization	23,897	295
<b>Loss from operations</b>	<b>(29,210)</b>	<b>(3,932)</b>
<b>Other expenses:</b>		
Interest expense – net	9,293	16,319
<b>Net loss</b>	<b>\$ (38,503)</b>	<b>\$ (20,251)</b>
<b>Other comprehensive income (loss):</b>		
Unrealized (loss) gain on derivative instruments	\$ (2,660)	\$ 243
<b>Comprehensive loss</b>	<b>\$ (41,163)</b>	<b>\$ (20,008)</b>
Net loss per unit attributable to Common Unit holders, basic and diluted	\$ (446,641)	\$ (270,730)
Weighted average Common Units outstanding, basic and diluted	100	100

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

**HOYA INTERMEDIATE, LLC**
**CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE PREFERRED UNITS AND MEMBERS' EQUITY (DEFICIT)**  
(in thousands, except unit data) (Unaudited)

					Three Months Ended March 31, 2020					
	Redeemable senior preferred units		Redeemable preferred units		Common units		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total members' equity (deficit)
	Units	Amount	Units	Amount	Units	Amount				
<b>Balances at January 1, 2020</b>	<b>100</b>	<b>\$197,154</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$772,683</b>	<b>\$ (252,490)</b>	<b>\$ (1,917)</b>	<b>\$ 518,276</b>
Net loss	—	—	—	—	—	—	—	(38,503)	—	(38,503)
Unrealized loss on derivative instruments	—	—	—	—	—	—	—	—	(2,660)	(2,660)
Deemed contribution from parent	—	—	—	—	—	—	1,186	—	—	1,186
Accretion of senior preferred units	—	6,161	—	—	—	—	(6,161)	—	—	(6,161)
<b>Balances at March 31, 2020</b>	<b>100</b>	<b>\$203,315</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$767,708</b>	<b>\$ (290,993)</b>	<b>\$ (4,577)</b>	<b>\$ 472,138</b>

					Three Months Ended March 31, 2021					
	Redeemable senior preferred units		Redeemable preferred units		Common units		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total members' equity (deficit)
	Units	Amount	Units	Amount	Units	Amount				
<b>Balances at January 1, 2021</b>	<b>100</b>	<b>\$218,288</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$755,716</b>	<b>\$(1,026,675)</b>	<b>\$ (822)</b>	<b>\$(271,781)</b>
Net loss	—	—	—	—	—	—	—	(20,251)	—	(20,251)
Unrealized gain on derivative instruments	—	—	—	—	—	—	—	—	243	243
Deemed contribution from parent	—	—	—	—	—	—	1,091	—	—	1,091
Accretion of senior preferred units	—	6,822	—	—	—	—	(6,822)	—	—	(6,822)
<b>Balances at March 31, 2021</b>	<b>100</b>	<b>\$225,110</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$749,985</b>	<b>\$(1,046,926)</b>	<b>\$ (579)</b>	<b>\$(297,520)</b>

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



**HOYA INTERMEDIATE, LLC**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands) (Unaudited)

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2021</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (38,503)	\$ (20,251)
<b>Adjustments to reconcile net loss to net cash provided by operating activities:</b>		
Depreciation and amortization	23,897	295
Amortization of deferred financing costs and interest rate cap	690	1,311
Equity-based compensation expense	1,186	1,091
Interest expense paid-in-kind	—	10,640
<b>Change in assets and liabilities:</b>		
Increase in accounts receivable	(6,975)	(1,843)
Decrease (increase) in inventory	546	(1,420)
Increase in prepaid expenses and other current assets	(50,429)	(1,398)
(Decrease) increase in accounts payable	(4,304)	37,857
Increase in accrued expenses and other current liabilities	85,080	1,164
(Decrease) increase in deferred revenue	(771)	3,006
Other assets and liabilities	713	309
<b>Net cash provided by operating activities</b>	<b>11,130</b>	<b>30,761</b>
<b>Cash flows from investing activities</b>		
Purchases of property and equipment	(321)	—
Investments in developed technology	(2,792)	(1,726)
<b>Net cash used in investing activities</b>	<b>(3,113)</b>	<b>(1,726)</b>
<b>Cash flows from financing activities</b>		
Payments of June 2017 First Lien Loan	(1,047)	(1,603)
Proceeds from Revolving Facility	50,000	—
<b>Net cash provided by (used in) financing activities</b>	<b>48,953</b>	<b>(1,603)</b>
<b>Net increase in cash and cash equivalents</b>	<b>56,970</b>	<b>27,432</b>
<b>Cash and cash equivalents – beginning of period</b>	<b>81,289</b>	<b>285,337</b>
<b>Cash and cash equivalents – end of period</b>	<b>\$ 138,259</b>	<b>\$ 312,769</b>
<b>Supplemental disclosure of cash flow information:</b>		
Paid-in-kind interest added to May 2020 First Lien Loan principal	\$ —	\$ 10,640
Cash paid for interest	\$ 8,603	\$ 6,985

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

**HOYA INTERMEDIATE, LLC**  
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**1. BACKGROUND AND DESCRIPTION OF BUSINESS**

Through our consolidated subsidiary, Vivid Seats LLC, we provide a leading full-service secondary ticketing marketplace, enabling fans and event seekers to purchase tickets to sports, concerts, theater, and other live events in the United States and Canada. Through our Marketplace segment, we operate an online platform enabling ticket buyers to purchase tickets to live events, while enabling ticket sellers to seamlessly manage their end-to-end operations. Through our Resale segment, our experienced team of professionals acquires live event tickets for resale on secondary marketplaces, including our own platform.

The accompanying condensed consolidated financial statements include all the accounts of Hoya Intermediate, LLC, its subsidiary, Vivid Seats LLC, and the wholly-owned subsidiaries of Vivid Seats LLC. The financial statements refer to Hoya Intermediate, LLC and its subsidiaries collectively as the “Company,” “us,” “we,” and “our” in these condensed consolidated financial statements. All intercompany transactions and balances have been eliminated in consolidation.

The condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and the applicable rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial information. As permitted under those rules, we condensed or omitted certain footnotes or other financial information that are normally required by GAAP for annual financial statements. We have included all adjustments necessary for a fair presentation of the results of the interim period. These adjustments consist of normal and recurring items. Our condensed consolidated financial statements are not necessarily indicative of results that may be expected for any other interim period or for the full year. These condensed consolidated financial statements should be read in conjunction with the audited annual consolidated financial statements and related notes. The Condensed Consolidated Balance Sheet at December 31, 2020 included herein was derived from the audited financial statements at that date, but does not include all disclosures including notes required by GAAP.

**COVID-19 Update**—The COVID-19 pandemic has materially impacted the Company’s business and results of operations in the fiscal year 2020 and during the first quarter of 2021. In the second quarter of 2020, the Company recognized impairment charges resulting in a reduction in the carrying values of goodwill, indefinite-lived trademarks, definite-lived intangible assets, and other long-lived assets. During the first three months of 2021, the Company continued to recognize a net loss and accruals for customer credits and future customer compensation. Refer to Note 7, *Accrued Expenses and Other Current Liabilities*, for additional disclosure regarding the Company’s accruals for customer credits and future customer compensation.

We expect uncertainties around our key accounting estimates to continue to evolve depending on the duration and degree of impact associated with the COVID-19 pandemic. Our estimates may change as new events occur and additional information emerges, and such changes are recognized or disclosed in our condensed consolidated financial statements. If economic conditions caused by the pandemic do not recover, as currently anticipated by management, the Company’s financial condition, cash flows, and results of operations may be further materially impacted.

**Accounting Estimates**—We use estimates and assumptions in the preparation of our condensed consolidated financial statements in accordance with GAAP. Our estimates and assumptions affect the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Our actual financial results could differ significantly from these estimates. The significant estimates underlying our condensed consolidated financial statements include the accrual for future customer compensation and the related recovery of future customer compensation asset; inventory valuation; receivable valuation; value of equity-based compensation; breakage rates related to customer credits; useful life of definite-lived intangible assets and other long-lived assets; and impairments of goodwill, indefinite-lived intangible assets, definite-lived intangible assets, and long-lived assets.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company's significant accounting policies are discussed in Note 2, *Summary of Significant Accounting Policies*, in the notes to our audited consolidated financial statements for the year ended December 31, 2020. There have been no significant changes to these policies that would have a material impact on the Company's reported results and financial position.

### *Recent Accounting Pronouncements*

As an "emerging growth company" under the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), the Company is provided the option to adopt new or revised accounting guidance either (1) within the same periods as those otherwise applicable to public business entities, or (2) within the same time periods as non-public business entities, including early adoption when permissible. The following provides a brief description of recent accounting pronouncements that could have a material effect on the Company's financial statements:

### *Issued accounting standards not yet adopted*

**Leases**—In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, *Leases (Topic 842)*, which requires lessees to recognize a right-of-use asset and a lease liability for virtually all of their leases (other than leases that meet the definition of a short-term lease) in the balance sheet. The liability will be equal to the present value of lease payments. The asset will be based on the liability, subject to adjustment, such as for initial direct costs. ASU 2020-05, *Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities*, deferred the effective date for non-public companies. ASU 2016-02 is now effective for fiscal periods beginning after December 15, 2021. The Company elected the extended transition period available to emerging growth companies and is currently evaluating the effect of adoption of the standard on the Company's consolidated financial statements and related disclosures.

**Financial Instruments-Credit Losses**—In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which changes how entities will measure credit losses for financial assets and certain other instruments that are not measured at fair value through net income. The new expected credit loss impairment model requires immediate recognition of estimated credit losses expected to occur. Additional disclosures are required regarding assumptions, models, and methods for estimating the credit losses. ASU 2019-10, *Financial Instruments-Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates*, deferred the effective date for non-public companies. The standard is effective for non-public companies for fiscal years beginning after December 15, 2022. The Company elected the extended transition period available to emerging growth companies and is currently evaluating the effect of adoption of the standard on the Company's consolidated financial statements and related disclosures.

**Reference Rate Reform**—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*, as modified in January 2021. The ASU is intended to help stakeholders during the global market-wide reference rate transition period. The new guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued. The guidance also establishes (1) a general contract modification principle that entities can apply in other areas that may be affected by reference rate reform and (2) certain elective hedge accounting expedients. The amendment is effective for all entities starting March 12, 2020 and can be adopted through December 31, 2022. The Company has not yet decided the date of adoption of this standard. LIBOR is used to calculate the interest on borrowings under the Company's June 2017 First Lien Loan and May 2020 First Lien Loan. The Company is currently evaluating whether this guidance will have a significant impact on its consolidated financial statements and related disclosures.

### 3. REVENUE RECOGNITION

The Company recognizes revenue in accordance with Accounting Standard Codification (“ASC”) 606. The Company has two reportable segments: Marketplace and Resale.

Within the Marketplace segment, the Company earns revenue by acting as an intermediary between ticket sellers and ticket buyers. In this capacity, the Company recognizes revenue for transactions occurring on its website and mobile app (Owned Properties), in addition to fees generated through the sale of tickets on partner sites using the Company’s platform (Private Label).

During the three months ended March 31, 2020 and 2021, Marketplace revenues consisted of the following (in thousands):

	Three Months Ended March 31,	
	2020	2021
Marketplace revenues:		
Owned Properties	\$ 43,078	\$ 18,196
Private Label	14,928	3,797
<b>Total Marketplace revenues</b>	<b>\$ 58,006</b>	<b>\$ 21,993</b>

During the three months ended March 31, 2020 and 2021, Marketplace revenues consisted of the following event categories (in thousands):

	Three Months Ended March 31,	
	2020	2021
Marketplace revenues:		
Concerts	\$ 34,347	\$ 7,014
Sports	17,734	14,138
Theater	5,732	783
Other	193	58
<b>Total Marketplace revenues</b>	<b>\$ 58,006</b>	<b>\$ 21,993</b>

Within the Resale segment, the Company sells tickets it owns on secondary ticket marketplaces, including its own website and mobile app. Resale revenues were \$11,655 thousand and \$2,121 thousand during the three months ended March 31, 2020 and 2021, respectively.

At December 31, 2019, \$5,932 thousand was recorded as deferred revenue, of which \$3,357 thousand was recognized as revenue during the three months ended March 31, 2020. At December 31, 2020, \$5,956 thousand was recorded as deferred revenue, of which \$577 thousand was recognized as revenue during the three months ended March 31, 2021. At March 31, 2021, the related balance was \$8,962 thousand. The Company’s deferred revenue balance primarily relates to the loyalty program and is presented in Deferred revenue in the Condensed Consolidated Balance Sheets.

Deferred revenue for contingent events at December 31, 2020 and March 31, 2021 was immaterial.

### 4. SEGMENT REPORTING

Our reportable segments are Marketplace and Resale. Through the Marketplace segment, the Company acts as an intermediary between ticket sellers and ticket buyers within its secondary marketplace. Through the Resale

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segment, the Company generates revenue by acquiring tickets from primary sellers, which it then sells through secondary ticket marketplaces. Revenues and contribution margin are used by the Company's Chief Operating Decision Maker ("CODM") to assess performance of the business. The Company defines contribution margin as revenues less cost of revenues and marketing and selling expenses.

We do not report our assets, capital expenditures, or related depreciation and amortization expenses by segment, because our CODM does not use this information to evaluate the performance of our operating segments.

The following table represents our segment information for the three months ended March 31, 2020 (in thousands):

	<u>Marketplace</u>	<u>Resale</u>	<u>Consolidated</u>
Revenues	\$ 58,006	\$ 11,655	\$ 69,661
Cost of revenues (exclusive of depreciation and amortization shown separately below)	9,978	9,890	19,868
Marketing and selling	31,947	—	31,947
<b>Contribution margin</b>	<b>\$ 16,081</b>	<b>\$ 1,765</b>	<b>17,846</b>
General and administrative			23,159
Depreciation and amortization			23,897
<b>Loss from operations</b>			<b>(29,210)</b>
Interest expense – net			9,293
<b>Net loss</b>			<b>\$ (38,503)</b>

The following table represents our segment information for the three months ended March 31, 2021 (in thousands):

	<u>Marketplace</u>	<u>Resale</u>	<u>Consolidated</u>
Revenues	\$ 21,993	\$ 2,121	\$ 24,114
Cost of revenues (exclusive of depreciation and amortization shown separately below)	2,358	1,138	3,496
Marketing and selling	7,955	—	7,955
<b>Contribution margin</b>	<b>\$ 11,680</b>	<b>\$ 983</b>	<b>12,663</b>
General and administrative			16,300
Depreciation and amortization			295
<b>Loss from operations</b>			<b>(3,932)</b>
Interest expense – net			16,319
<b>Net loss</b>			<b>\$ (20,251)</b>

## 5. GOODWILL AND INTANGIBLE ASSETS

Definite-lived intangible assets consist entirely of developed technology, which had a net carrying amount of \$2,358 thousand and \$3,789 thousand at December 31, 2020 and March 31, 2021, respectively. At December 31, 2020 and March 31, 2021, accumulated amortization related to the Company's developed technology was \$264 thousand and \$559 thousand, respectively. The Company's developed technology has a useful life of 3 to 5 years. Prior to its impairment in the second quarter of 2020, the Company's definite-lived intangible assets included supplier relationships, customer relationships, and non-compete agreements, in addition to developed technology.

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The net changes in the carrying amounts of the Company's intangible assets and goodwill during the three months ended March 31, 2020 and 2021 were as follows (in thousands):

	Definite-lived Intangible Assets	Trademark	Goodwill
<b>Balance at January 1, 2020</b>	<b>\$ 149,948</b>	<b>\$ 143,400</b>	<b>\$ 1,060,428</b>
Capitalized development costs	2,792	—	—
Amortization	(23,462)	—	—
<b>Balance at March 31, 2020</b>	<b>\$ 129,278</b>	<b>\$ 143,400</b>	<b>\$ 1,060,428</b>
<b>Balance at January 1, 2021</b>	<b>\$ 2,358</b>	<b>\$ 64,666</b>	<b>\$ 683,327</b>
Capitalized development costs	1,726	—	—
Amortization	(295)	—	—
<b>Balance at March 31, 2021</b>	<b>\$ 3,789</b>	<b>\$ 64,666</b>	<b>\$ 683,327</b>

The Company assesses goodwill and other indefinite-lived intangible assets for impairment annually, or more frequently if events or changes in circumstances indicate that an asset may be impaired. Definite-lived intangible assets are assessed for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable. There were no impairment charges recorded during the three months ended March 31, 2020 and 2021.

## 6. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets at December 31, 2020 and March 31, 2021 consist of the following (in thousands):

	December 31, 2020	March 31, 2021
Recovery of future customer compensation	\$ 75,257	\$ 71,057
Insurance recovery asset	2,500	2,500
Capitalized transaction costs	—	1,975
Prepaid expenses	2,309	5,932
<b>Total prepaid expenses and other current assets</b>	<b>\$ 80,066</b>	<b>\$ 81,464</b>

Recovery of future customer compensation represents expected recoveries of compensation to be paid to customers for event cancellations or other service issues related to previously recorded sales transactions.

On April 21, 2021, the Company and Hoya TopCo, LLC, our parent, entered into a definitive transaction agreement with Horizon Acquisition Corporation ("Horizon"). Refer to Note 13, *Subsequent Events*, for additional details regarding the transaction with Horizon. Capitalized transaction costs consist of advisory, banking, legal and accounting fees incurred by the Company, which are directly attributable to the transaction.

## 7. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities at December 31, 2020 and March 31, 2021 consist of the following (in thousands):

	December 31, 2020	March 31, 2021
Marketing expense	\$ 1,086	\$ 5,968
Accrued tax	16,913	19,211
Accrued customer credits	125,481	130,534
Accrued future customer compensation	94,061	87,591
Other	18,593	13,994
<b>Total accrued expenses and other current liabilities</b>	<b>\$ 256,134</b>	<b>\$257,298</b>

Customer credits represent credits issued and outstanding for event cancellations or other service issues related to recorded sales transactions. The accrued amount is reduced by the amount of credits estimated to go unused, which is recognized in proportion to the pattern of redemption for the customer credits.

Future customer compensation represents an estimate of the amount of customer compensation due from cancellations in the future. These provisions are based on historic experience and recent revenue volumes and are recognized as a component of Revenues. The expected recoveries of these obligations are included in Prepaid expenses and other current assets in the Condensed Consolidated Balance Sheets. This estimated accrual could be impacted by future activity differing from our estimates, the effects of which could be material.

## 8. FINANCIAL INSTRUMENTS

**Derivatives**

At March 31, 2020, we held interest rate swaps and an interest rate cap. We held an interest rate cap at December 31, 2020 and March 31, 2021. The financial instruments were assessed as highly effective at inception and hedge accounting was applied. As such, the net interest payments accrued each month are included in Interest expense – net in the Condensed Consolidated Statements of Operations and Comprehensive Loss and the change in fair value is recorded as a component of Accumulated other comprehensive loss (“AOCL”) in the Condensed Consolidated Balance Sheets.

The financial instruments entered into by the Company are typically executed over-the-counter. All financial instruments were measured at fair value on a recurring basis. The fair value is derived from discounted cash flows adjusted for nonperformance risk. The fair value models primarily use market observable inputs and, therefore, are classified as Level 2 assets. These models incorporate a variety of factors, including, where applicable, maturity, interest rate yield curves, and counterparty credit risks. The credit valuation adjustment associated with the derivatives, related to the likelihood of default by the Company and the counterparty, was not significant to the overall valuation. Refer to Note 9, *Fair Value*, for additional disclosure regarding fair value measurements.

*Interest Rate Swaps*

On November 10, 2017, the Company purchased pay-fixed, receive-float interest rate swaps with a combined notional value of \$522,656 thousand on March 31, 2020. The interest rate swaps were purchased to reduce a portion of the exposure to fluctuations in LIBOR interest rates associated with our variable-rate term loan. The interest rate swaps had a fixed rate of 1.9% and a maturity date of September 30, 2020.

The objective in using the swaps was to add stability to interest expense and to manage the exposure to interest rate movements. The interest rate swaps are designated as effective cash flow hedges involving the receipt of

variable amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreement without exchange of the underlying notional amount.

The Company performed a regression analysis at inception of the hedging relationship to assess the effectiveness. The design of the regression analysis addresses the effectiveness of the hedging relationship by considering how the hedge instrument performs against the forecasted transaction or hypothetical interest rate swaps over historical months. The changes in the fair value of the hedge instrument and the hedged item over the historical months demonstrated the effectiveness of the hedge relationship as the prospective and retrospective test. On an ongoing basis, the Company assessed hedge effectiveness prospectively and retrospectively. The hedge continued to be highly effective through its maturity date.

The interest rate swaps are recognized on a gross basis at fair value in the Condensed Consolidated Balance Sheets within Other liabilities at March 31, 2020. At March 31, 2020, interest rate swaps had a fair value of \$3,547 thousand. The amount recognized in Interest expense — net in the Condensed Consolidated Statements of Operations and Comprehensive Loss was \$256 thousand of expense for the three months ended March 31, 2020.

#### *Interest Rate Cap*

On November 26, 2018, the Company entered into an interest rate cap with an effective date of September 30, 2020 and a maturity date of September 30, 2021. The Company paid \$1,030 thousand to enter into the cap. The notional value was \$517,734 thousand on March 31, 2021. The interest rate cap was purchased to reduce a portion of the exposure to fluctuations in LIBOR interest rates associated with our variable-rate term loan. The interest rate cap has a strike rate of 3.5%.

The objective in using the cap is to add stability to interest expense and to manage the exposure to interest rate movements. Interest rate caps involve the borrower paying the hedge provider an initial one-time fee in exchange for the hedge provider paying the borrower the excess of the floating interest rate payment above a strike rate, in the event that the floating interest rate is greater than the strike rate during the period between the effective date and maturity date.

The Company performed a regression analysis at inception of the hedging relationship to assess the effectiveness. The design of the regression analysis addressed the effectiveness of the hedging relationship by considering how the hedge instrument performs against the forecasted transaction or hypothetical interest rate cap over historical months. Historical changes in the fair value of the hedge instrument and the underlying item demonstrated the effectiveness of the hedging relationship. On an ongoing basis, the Company assesses hedge effectiveness prospectively and retrospectively. The hedge continued to be highly effective through March 31, 2021.

The interest rate cap is measured at fair value, which was zero at December 31, 2020 and March 31, 2021.

The amount of loss expected to be reclassified into Interest expense – net in the Condensed Consolidated Statements of Operations and Comprehensive Loss within the next twelve months is \$579 thousand.

#### *Effect of Derivative Contracts on Accumulated Other Comprehensive Loss and Earnings*

Since the Company designated the financial instruments as effective cash flow hedges that qualify for hedge accounting, net interest payments are recorded in Interest expense – net in the Condensed Consolidated Statements of Operations and Comprehensive Loss and unrealized gains or losses resulting from adjusting the financial instruments to fair value are recorded as a component of Other comprehensive income/(loss) and subsequently reclassified into earnings in the same period during which the hedged transaction affects earnings. During the three months ended March 31, 2021, the Company reclassified losses of \$243 thousand into Interest expense – net from Accumulated other comprehensive loss related to the interest rate cap. Cash flows resulting from settlements are presented as a component of cash flows from operating activities within the Condensed Consolidated Statements of Cash Flows.



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The following table presents the effects of hedge accounting on Accumulated other comprehensive loss for the three months ended March 31, 2020 for interest rate contracts designated as cash flow hedges (in thousands):

	<u>January 1, 2020</u>	<u>Amount of Loss Recognized in AOCL</u>	<u>Less: Amount of Loss Reclassified from AOCL to Income</u>	<u>March 31, 2020</u>
Interest rate swaps	\$ (887)	\$ (2,660)	\$ —	\$ (3,547)
Interest rate cap	(1,030)	—	—	(1,030)
<b>Total</b>	<b>\$ (1,917)</b>	<b>\$ (2,660)</b>	<b>\$ —</b>	<b>\$ (4,577)</b>

The following table presents the effects of hedge accounting on Accumulated other comprehensive loss for the three months ended March 31, 2021 for interest rate contracts designated as cash flow hedges (in thousands):

	<u>January 1, 2021</u>	<u>Amount of Loss Recognized in AOCL</u>	<u>Less: Amount of Loss Reclassified from AOCL to Income</u>	<u>March 31, 2021</u>
Interest rate cap	\$ (822)	\$ —	\$ (243)	\$ (579)

## Accounts receivable

Due to the significant COVID-19 pandemic related event cancellations experienced during 2020 and 2021, \$23,418 thousand and \$18,213 thousand of the Accounts receivable balance at December 31, 2020 and March 31, 2021, respectively, consisted of amounts due from marketplace ticket sellers for cancelled event tickets. There is a concentration of risk associated with that cohort of creditors due to the unfavorable impact of the COVID-19 pandemic on the live event industry. We recorded an allowance for doubtful accounts of \$5,715 thousand and \$3,754 thousand at December 31, 2020 and March 31, 2021, respectively, to reflect potential challenges in collecting funds from marketplace ticket sellers. Write-offs were immaterial for three months ended March 31, 2020 and 2021.

## 9. FAIR VALUE

Our financial assets and liabilities are valued using market prices on both active markets (Level 1), less active markets (Level 2) and little or no market activity (Level 3). Level 1 instrument valuations are obtained from unadjusted quoted prices for identical assets or liabilities in active markets. Level 2 instrument valuations are obtained from readily available pricing sources for comparable instruments, identical instruments in less active markets, or models using other inputs that are directly or indirectly observable in the marketplace. Level 3 instrument valuations typically reflect management's estimate of assumptions and are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. We did not have any transfers of financial instruments between valuation levels during the three months ended March 31, 2020 or 2021.

Cash and cash equivalents include all cash balances and highly liquid investments purchased with maturities of three months or less. The Company's cash and cash equivalents consist primarily of domestic bank accounts, interest-bearing deposit accounts, and money market accounts managed by third-party financial institutions. Cash and cash equivalents are valued by the Company based on quoted prices in an active market, which represent a Level 1 measurement within the fair value hierarchy.

The fair value for our derivative instruments is based upon inputs corroborated by observable market data with similar tenors, which are considered Level 2 inputs. Refer to Note 8, *Financial Instruments*, for further details on our derivative instruments.

The Company's June 2017 First Lien Loan is held by a third-party financial institution and is carried at the outstanding principal balance, less debt issuance costs and any unamortized discount or premium. The fair value

was estimated using quoted prices that are directly observable in the marketplace, therefore, the fair value is estimated on a Level 2 basis. At December 31, 2020, the June 2017 First Lien Loan had a fair value of \$583,145 thousand as compared to the carrying amount of \$609,080 thousand. At March 31, 2021, the June 2017 First Lien Loan had a fair value of \$604,004 thousand as compared to the carrying amount of \$608,107 thousand.

The Company's May 2020 First Lien Loan is not publicly traded and is carried at the outstanding principal balance, less debt issuance costs and any unamortized discount or premium. The fair value was estimated by discounting the future cash flows using current interest rates at which similar borrowings with similar maturities would be made to borrowers with similar credit ratings. The fair value was estimated assuming prepayment of the loan upon the loan's third anniversary and is estimated on a Level 3 basis, as provided by ASC Topic 820, *Fair Value Measurement*. At December 31, 2020, the May 2020 First Lien Loan had a fair value of \$319,850 thousand as compared to the carrying amount of \$268,235 thousand. At March 31, 2021, the May 2020 First Lien Loan had a fair value of \$318,937 thousand as compared to the carrying amount of \$279,313 thousand.

Other financial instruments, including accounts receivable and accounts payable, are carried at cost, which approximates their fair value because of the short-term nature of these instruments.

## 10. COMMITMENTS AND CONTINGENCIES

### Litigation

The Company, from time to time, is involved in various claims and legal actions arising in the ordinary course of business, none of which, in the opinion of management, could have a material effect on the Company's business, financial position or results of operations other than those matters discussed herein.

The Company is a co-defendant in a class action lawsuit in Canada alleging illegal resale above face value. The Company is required to issue coupons to members of the class, which will take place once the court determines sufficient quantities of live events are occurring post-COVID-19 pandemic. At December 31, 2020 and March 31, 2021, a liability of \$1,083 thousand was recorded in Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheets related to the expected costs of fees, plaintiff's counsel costs and expected credit redemptions as of the measurement date.

The Company has received complaints regarding potential class action lawsuits related to customer compensation for cancellations, primarily as a result of COVID-19 restrictions. As of December 31, 2020 and March 31, 2021, settlement negotiations were ongoing and the Company recorded a liability of \$2,550 thousand in Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheets related to these matters. In March 2021, the Company reached a settlement agreement that is pending formal approval by the court. The Company expects to recover much of these costs under its insurance policies and has separately recognized an insurance recovery asset of \$2,500 thousand within Prepaid expenses and other current assets in the Condensed Consolidated Balance Sheets at December 31, 2020 and March 31, 2021.

### Other

In 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair Inc.*, which overturned previous case law that had precluded states from imposing sales tax collection requirements on retailers without a physical presence in the state. In response, several states have adopted laws that attempt to impose tax collection obligations on out-of-state companies. The Company is in the process of assessing its obligation and registration requirements in these jurisdictions. Pending these assessments, it is more likely than not some jurisdictions could assess taxes on transactions for which no sales tax was collected from the buyer at the time of the transaction. The Company has recognized a liability for this potential tax of \$16,818 thousand and \$19,184 thousand at December 31, 2020 and March 31, 2021, respectively. This liability is recorded in Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheets. No jurisdiction has assessed any amounts owed as of March 31, 2021.

## 11. RELATED-PARTY TRANSACTIONS

In December 2020, Vivid Cheers Inc. (“Vivid Cheers”) was incorporated as a non-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code. Vivid Cheers’ mission is to support causes and organizations dedicated to healthcare, education, and support of workers in the live events industry during times of need. The Company has the right to elect the board of directors of Vivid Cheers, which is currently formed by the Company’s executives. The Company does not have a controlling financial interest in Vivid Cheers, and accordingly, does not consolidate Vivid Cheers’ statement of activities with its financial results. The Company committed charitable contributions of \$521 thousand for the three months ended March 31, 2021 to Vivid Cheers. The Company had accrued charitable contributions payable of \$450 thousand and \$125 thousand as of December 31, 2020 and March 31, 2021, respectively.

## 12. NET LOSS PER UNIT

The following table sets forth the computation of basic and diluted net loss per unit attributable to common unitholders for the periods indicated (in thousands, except per unit amounts):

	March 31, 2020	March 31, 2021
Net loss	\$ (38,503)	\$ (20,251)
Accretion of senior preferred units	6,161	6,822
Net loss attributable to common unitholders	<b>\$ (44,664)</b>	<b>\$ (27,073)</b>
Weighted-average common units, basic and diluted	100	100
Net loss per unit attributable to common unitholders, basic and diluted	<b><u><u>\$(446,641)</u></u></b>	<b><u><u>\$(270,730)</u></u></b>

The Company has no dilutive common equivalent units. Accordingly, for the periods presented, diluted net loss per unit is equal to basic net loss per unit.

## 13. SUBSEQUENT EVENTS

The Company evaluated subsequent events for recognition or disclosure through May 27, 2021.

On April 21, 2021, the Company and Hoya Topco, LLC, our parent, entered into a definitive transaction agreement with Horizon, a publicly traded special purpose acquisition company, and Horizon Sponsor, LLC, a Delaware limited liability company, to effect a merger of the Company and Horizon. The merger transaction is expected to close during the second half of 2021.

The merger will be effectuated in the following principal steps:

- Horizon will merge with and into Vivid Seats Inc., a Delaware corporation formed by the Company to facilitate the merger, upon which the separate corporate existence of Horizon will cease, and Vivid Seats Inc. will become the surviving corporation.
- Certain third-party investors, including Horizon Sponsor, LLC, will purchase an aggregate of 22,500,000 shares of Class A common stock of Vivid Seats Inc., par value \$0.0001 per share for an aggregate purchase price of \$225,000 thousand, which is considered a private investment in public equity (“PIPE”). In the event cash proceeds from the merger transaction, which consist of the PIPE financing and the trust account held by Horizon, are less than \$768,984 thousand, certain third-party investors will increase the PIPE financing by an amount equal to the shortfall.
- The shareholders of Hoya Topco, LLC will exchange their interests in the Company for Class B common stock in Vivid Seats Inc., which will be accounted for as a reverse recapitalization.

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- Upon closing, the Company, Hoya Topco, LLC and other designated parties expect to enter into a tax receivable agreement with Vivid Seats Inc. Under the terms of the expected agreement, Vivid Seats Inc. would be expected to pay Hoya Topco, LLC and other designated parties a portion of future income tax savings resulting from existing tax attributes related to the Company.

Total expected cash proceeds from the merger transaction, which consist of marketable securities held in a trust account by Horizon and the PIPE, are \$769,000 thousand. Following the transaction, Hoya Intermediate, LLC shareholders will own a controlling interest in Vivid Seats Inc.

Upon consummation of the transaction, Vivid Seats Inc. will become a publicly traded corporation. The transaction is subject to the approval of the shareholders of Hoya Intermediate, LLC and Horizon.

## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of Hoya Intermediate, LLC

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

We have audited the accompanying consolidated balance sheets of Hoya Intermediate, LLC and subsidiaries (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive loss, redeemable preferred units and members’ equity (deficit), and cash flows for the years ended December 31, 2020 and 2019, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years ended December 31, 2020 and 2019, in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the 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 in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting 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.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### **Emphasis of Matter**

As discussed in Note 2 to the financial statements, in 2020, the Company recorded \$574 million of impairment charges as a result of a decline in fair value of goodwill, intangible assets, and long-lived assets due to the unfavorable impact of the COVID-19 pandemic on the Company’s operations.

/s/ Deloitte & Touche LLP

Chicago, Illinois  
May 27, 2021

We have served as the Company’s auditor since 2019.

**HOYA INTERMEDIATE, LLC**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except unit data)

	December 31, 2019	December 31, 2020
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 81,289	\$ 285,337
Accounts receivable – net	25,000	35,250
Inventory – net	11,556	7,462
Prepaid expenses and other current assets	12,072	80,066
<b>Total current assets</b>	<b>129,917</b>	<b>408,115</b>
Property and equipment – net	4,016	—
Personal seat licenses – net	7,194	—
Intangible assets – net	293,348	67,024
Goodwill	1,060,428	683,327
Other non-current assets	2,146	664
<b>Total assets</b>	<b>\$ 1,497,049</b>	<b>\$ 1,159,130</b>
<b>Liabilities and members' deficit</b>		
Current liabilities:		
Accounts payable	\$ 91,443	\$ 62,769
Accrued expenses and other current liabilities	60,008	256,134
Deferred revenue	5,932	5,956
Current maturities of long-term debt – net	5,856	6,412
<b>Total current liabilities</b>	<b>163,239</b>	<b>331,271</b>
Long-term debt – net	606,589	870,903
Other liabilities	1,852	510
<b>Total long-term liabilities</b>	<b>608,441</b>	<b>871,413</b>
<b>Commitments and contingencies (Note 14)</b>		
<b>Redeemable Preferred Units</b>		
Redeemable Senior Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at December 31, 2019 and 2020 (aggregate involuntary liquidation preference of \$189,571 and \$214,008 at December 31, 2019 and 2020, respectively)	197,154	218,288
Redeemable Preferred Units - \$0 par value; 100 units authorized, issued, and outstanding at December 31, 2019 and 2020	9,939	9,939
<b>Members' equity (deficit)</b>		
Common Units - \$0 par value; unlimited authorized, 100 units issued and outstanding at December 31, 2019 and 2020	—	—
Additional paid-in capital	772,683	755,716
Accumulated deficit	(252,490)	(1,026,675)
Accumulated other comprehensive loss	(1,917)	(822)
Total members' equity (deficit)	518,276	(271,781)
<b>Total liabilities, redeemable preferred units, and members' equity (deficit)</b>	<b>\$ 1,497,049</b>	<b>\$ 1,159,130</b>

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

**HOYA INTERMEDIATE, LLC**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(in thousands except unit and per unit data)

	<b>Years Ended December 31,</b>	
	<b>2019</b>	<b>2020</b>
Revenues	\$ 468,925	\$ 35,077
<b>Costs and expenses:</b>		
Cost of revenues (exclusive of depreciation and amortization shown separately below)	103,334	22,937
Marketing and selling	178,446	38,121
General and administrative	104,004	67,952
Depreciation and amortization	93,078	48,247
Impairment charges	—	573,838
<b>Loss from operations</b>	<b>(9,937)</b>	<b>(716,018)</b>
<b>Other expenses:</b>		
Interest expense – net	41,497	57,482
Loss on extinguishment of debt	2,414	685
<b>Net loss</b>	<b>\$ (53,848)</b>	<b>\$ (774,185)</b>
<b>Other comprehensive income (loss):</b>		
Unrealized (loss) gain on derivative instruments	\$ (7,225)	\$ 1,095
<b>Comprehensive loss</b>	<b>\$ (61,073)</b>	<b>\$ (773,090)</b>
Net loss per unit attributable to Common Unit holders, basic and diluted	\$ (682,472)	\$ (7,953,192)
Weighted average Common Units outstanding, basic and diluted	100	100

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

**HOYA INTERMEDIATE, LLC**  
CONSOLIDATED STATEMENTS OF REDEEMABLE PREFERRED UNITS AND MEMBERS' EQUITY (DEFICIT)  
(in thousands, except unit data)

	Redeemable senior preferred units		Redeemable preferred units		Common units		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Total members' equity (deficit)
	Units	Amount	Units	Amount	Units	Amount				
<b>Balances at January 1, 2019</b>	<b>100</b>	<b>\$182,755</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$790,003</b>	<b>\$ (198,642)</b>	<b>\$ 5,308</b>	<b>\$ 596,669</b>
Net loss	—	—	—	—	—	—	—	(53,848)	—	(53,848)
Unrealized loss on derivative instruments	—	—	—	—	—	—	—	—	(7,225)	(7,225)
Deemed contribution from parent	—	—	—	—	—	—	5,174	—	—	5,174
Accretion of senior preferred units	—	14,399	—	—	—	—	(14,399)	—	—	(14,399)
Distributions to parent	—	—	—	—	—	—	(8,095)	—	—	(8,095)
<b>Balances at December 31, 2019</b>	<b>100</b>	<b>\$197,154</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$772,683</b>	<b>\$ (252,490)</b>	<b>\$ (1,917)</b>	<b>\$ 518,276</b>
Net loss	—	—	—	—	—	—	—	(774,185)	—	(774,185)
Unrealized gain on derivative instruments	—	—	—	—	—	—	—	—	887	887
Loss reclassified from accumulated other comprehensive loss to earnings	—	—	—	—	—	—	—	—	208	208
Deemed contribution from parent	—	—	—	—	—	—	4,287	—	—	4,287
Accretion of senior preferred units	—	21,134	—	—	—	—	(21,134)	—	—	(21,134)
Distributions to parent	—	—	—	—	—	—	(120)	—	—	(120)
<b>Balances at December 31, 2020</b>	<b>100</b>	<b>\$218,288</b>	<b>100</b>	<b>\$ 9,939</b>	<b>100</b>	<b>\$ —</b>	<b>\$755,716</b>	<b>\$ (1,026,675)</b>	<b>\$ (822)</b>	<b>\$ (271,781)</b>

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



**HOYA INTERMEDIATE, LLC**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Years Ended December 31, 2019	2020
<b>Cash flows from operating activities</b>		
Net loss	\$ (53,848)	\$ (774,185)
<b>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</b>		
Depreciation and amortization	93,078	48,247
Amortization of deferred financing costs and interest rate cap	2,860	3,863
Loss on disposal of long-lived assets	960	169
Equity-based compensation expense	5,174	4,287
Loss on extinguishment of debt	2,414	685
Interest expense paid-in-kind	—	15,678
Impairment charges	—	573,838
<b>Change in assets and liabilities:</b>		
Decrease (increase) in accounts receivable	225	(10,250)
(Increase) decrease in inventory	(1,628)	4,094
Decrease (increase) in prepaid expenses and other current assets	642	(67,584)
Increase (decrease) in accounts payable	1,792	(28,674)
Increase in accrued expenses and other current liabilities	23,272	195,404
Increase in deferred revenue	2,005	24
Other assets and liabilities	(468)	512
<b>Net cash provided by (used in) operating activities</b>	<b>76,478</b>	<b>(33,892)</b>
<b>Cash flows from investing activities</b>		
Acquisition, net of cash acquired	(31,118)	—
Purchases of property and equipment	(1,258)	(341)
Proceeds from the sale of personal seat licenses	170	—
Investments in developed technology	(7,949)	(7,264)
<b>Net cash used in investing activities</b>	<b>(40,155)</b>	<b>(7,605)</b>
<b>Cash flows from financing activities</b>		
Payments of June 2017 First Lien Loan	(6,967)	(5,856)
Payments of June 2017 Second Lien Loan	(40,000)	—
Proceeds from May 2020 First Lien Loan	—	260,000
Proceeds from Revolving Facility	—	50,000
Payments of Revolving Facility	—	(50,000)
Payments of deferred financing costs and other debt-related costs	(400)	(8,479)
Distributions to parent	(8,095)	(120)
<b>Net cash (used in) provided by financing activities</b>	<b>(55,462)</b>	<b>245,545</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(19,139)</b>	<b>204,048</b>
<b>Cash and cash equivalents – beginning of period</b>	<b>100,428</b>	<b>81,289</b>
<b>Cash and cash equivalents – end of period</b>	<b>\$ 81,289</b>	<b>\$ 285,337</b>
<b>Supplemental disclosure of cash flow information:</b>		
Paid-in-kind interest added to May 2020 First Lien Loan principal	\$ —	\$ 15,678
Cash paid for interest	\$ 38,653	\$ 34,592

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

**HOYA INTERMEDIATE, LLC**  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**1. BACKGROUND AND DESCRIPTION OF BUSINESS**

Through our consolidated subsidiary, Vivid Seats LLC, we provide a leading full-service secondary ticketing marketplace, enabling fans and event seekers to purchase tickets to sports, concerts, theater, and other live events in the United States and Canada. Through our Marketplace segment, we operate an online platform enabling ticket buyers to purchase tickets to live events, while enabling ticket sellers to seamlessly manage their end-to-end operations. Through our Resale segment, our experienced team of professionals acquires live event tickets for resale on secondary marketplaces, including our own platform.

The accompanying consolidated financial statements include all the accounts of Hoya Intermediate, LLC, its subsidiary, Vivid Seats LLC, and the wholly-owned subsidiaries of Vivid Seats LLC. The financial statements refer to Hoya Intermediate, LLC and its subsidiaries collectively as the “Company,” “us,” “we,” and “our” in these consolidated financial statements.

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. All intercompany transactions and balances have been eliminated in consolidation.

**COVID-19 Update**—The COVID-19 pandemic has materially impacted the Company’s business and results of operations in the fiscal year 2020. In addition to a decrease in operating results, the Company recognized asset impairment charges, a reserve against certain receivables, and increased accruals for customer credits and future customer compensation. Refer to the “Accounts Receivable and Credit Policies,” “Goodwill and Intangible Assets,” “Long-Lived Assets Impairment Assessments,” “Accrued Customer Credits,” and “Accrued Future Customer Compensation” sections within Note 2, *Summary of Significant Accounting Policies*, below for further discussion.

We expect uncertainties around our key accounting estimates to continue to evolve depending on the duration and degree of impact associated with the COVID-19 pandemic. Our estimates may change as new events occur and additional information emerges, and such changes are recognized or disclosed in our consolidated financial statements. If economic conditions caused by the pandemic do not recover, as currently anticipated by management, the Company’s financial condition, cash flows, and results of operations may be further materially impacted.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Use of Estimates**—In preparing the financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The Company’s key estimates include the Accrual for future customer compensation and the related Recovery of future customer compensation asset; inventory valuation; receivable valuation; value of equity-based compensation; breakage rates related to customer credits; useful life of definite-lived intangible assets and other long-lived assets; valuation of intangible assets acquired in an acquisition; and impairments of goodwill, indefinite-lived intangible assets, definite-lived intangible assets, and long-lived assets.

**Cash and Cash Equivalents**—Cash and cash equivalents include all cash balances and highly liquid investments purchased with original maturities of three months or less. The Company’s cash and cash equivalents consist primarily of domestic bank accounts, interest-bearing deposit accounts, and money market accounts managed by third-party financial institutions.

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Cash and cash equivalents held in interest-bearing accounts may exceed the Federal Deposit Insurance Corporation insurance limits. To reduce credit risk, the Company monitors the credit standing of the financial institutions that hold the Company's cash and cash equivalents. However, balances could be impacted in the future if underlying financial institutions fail. As of December 31, 2019 and 2020, the Company has not experienced any loss or lack of access to its cash and cash equivalents.

**Accounts Receivable and Credit Policies**—At December 31, 2019, accounts receivable consists primarily of uncollateralized payment processor obligations due under normal trade terms requiring payment within five days. Credit risk with respect to accounts receivable from payment processing entities is limited due to the concentration of those receivables with large financial institutions and the frequency with which those accounts receivable turn over. There was no allowance for doubtful accounts recorded at December 31, 2019.

Due to the significant COVID-19 pandemic related event cancellations experienced during 2020, \$23,418 thousand of the Accounts receivable balance at December 31, 2020 consisted of amounts due from marketplace ticket sellers for cancelled event tickets. There is a concentration of risk associated with that cohort of creditors due to the unfavorable impact of the COVID-19 pandemic on the live event industry. We recorded an allowance for doubtful accounts of \$5,715 thousand at December 31, 2020 to reflect potential challenges in collecting funds from marketplace ticket sellers. Accounts receivable balances are stated net of allowance for doubtful accounts. Bad debt expense is presented as a reduction of Revenues in the Consolidated Statements of Operations and Comprehensive Loss. Write-offs were immaterial for the year ended December 31, 2020.

**Inventory**—Inventory consists of tickets to live events. All inventory is valued at the lower of cost or net realizable value, determined by the specific identification method. A provision is recorded to adjust inventory to its estimated realizable value when inventory is determined to be in excess of anticipated demand. During the years ended December 31, 2019 and 2020, the Company incurred inventory write-downs of \$3,634 thousand and \$1,627 thousand, respectively, which are presented in Cost of revenues in the Consolidated Statements of Operations and Comprehensive Loss.

**Property and Equipment**—Property and equipment are stated at cost, net of depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives:

<u>Asset Class</u>	<u>Useful Life</u>
Computer Equipment	5 years
Purchased Software	3 years
Furniture and Fixtures	7 years

Leasehold improvements are amortized over the shorter of the term of the lease or the improvements' estimated useful lives.

**Personal Seat Licenses**—The Company has purchased personal seat licenses ("PSLs") from various sports teams. PSLs are stated at amortized cost. The term of the PSL aligns with the life of the corresponding stadium, which is estimated at 30 years from its construction or its last major renovation. Amortization is computed using the straight-line method over the remaining life of the stadium at the time the PSL is purchased. Amortization expense was \$454 thousand and \$226 thousand for the years ended December 31, 2019 and 2020, respectively, and is presented in Depreciation and amortization expense in the Statements of Operations and Comprehensive Loss. During the second quarter of 2020, the Company determined a triggering event occurred, which resulted in an impairment of its PSL's. Refer to Note 8, *Impairments*, for additional information.

**Long-Lived Assets Impairment Assessments**—We review our long-lived assets (property and equipment – net and personal seat licenses – net) for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable. The fair value of our long-lived assets is determined using both the market approach and income approach, utilizing Level 3 inputs. If circumstances

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require a long-lived asset or asset group to be held and used be tested for possible impairment, we first compare the undiscounted cash flows expected to be generated by that long-lived asset or asset group to its carrying amount. If the carrying amount of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent the carrying amount exceeds its fair value.

During the second quarter of 2020, we determined a triggering event occurred that required us to evaluate our long-lived assets for impairment. We recorded an impairment charge as a result of those assessments. Refer to Note 8, *Impairments*, for additional information.

**Goodwill and Intangible Assets**—Goodwill represents the excess purchase price over the fair value of the net assets acquired. Intangible assets other than goodwill primarily consists of customer and supplier relationships, developed technology, non-compete agreements, and trademarks.

We evaluate goodwill and our indefinite-lived intangible asset for impairment annually on October 31 or more frequently when an event occurs or circumstances change that indicates the carrying value may not be recoverable. We have the option to assess goodwill and our indefinite-lived intangible asset for impairment by first performing a qualitative assessment to determine whether it is more-likely-than-not that the fair value of a reporting unit or the indefinite-lived intangible asset is less than its carrying value. If it is determined that the reporting unit's or the indefinite-lived intangible asset's fair value is more-likely-than-not less than its carrying value, or if we do not elect the option to perform an initial qualitative assessment, we perform a quantitative assessment of the reporting unit's or the indefinite-lived intangible asset's fair value. If the fair value of the reporting unit or the indefinite-lived intangible asset is in excess of its carrying value, the related goodwill or the indefinite-lived intangible asset is not impaired. If the fair value of the reporting unit is less than the carrying value, we recognize an impairment equal to the difference between the carrying value of the reporting unit and its fair value, not to exceed the carrying value of goodwill. If the fair value of the indefinite-lived intangible asset is less than the carrying value, we recognize an impairment equal to the difference.

The fair value of our definite-lived intangible assets is determined using both the market approach and income approach, utilizing Level 3 inputs. We review our definite-lived intangible assets for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable. If circumstances require a definite-lived intangible asset or its asset group to be held and used be tested for possible impairment, we first compare the undiscounted cash flows expected to be generated by that definite-lived intangible asset or asset group to its carrying amount. If the carrying amount of the definite-lived intangible asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying amount exceeds its fair value.

Definite-lived intangible assets are amortized on a straight-line basis over their estimated period of benefit, over the following estimated useful lives:

<u>Asset Class</u>	<u>Useful Life</u>
Non-competition agreements	3 years
Supplier relationships	4 years
Developed technology	3-5 years
Customer relationships	3-5 years

The useful lives of definite-lived intangible assets are re-assessed whenever events or business circumstances indicate a change in life has occurred.

During the second quarter of 2020, we determined a triggering event occurred that required us to evaluate our goodwill, indefinite-lived intangible asset, and definite-lived intangible assets for impairment, and we recorded an impairment charge as a result of those assessments. Refer to Note 8, *Impairments*, for additional information.

**Business Combinations**—During 2019, we completed an acquisition of Fanxchange Limited, which we accounted for using the acquisition method of accounting. See Note 6, *Acquisition*. Identifiable assets acquired and liabilities assumed were recognized and measured as of the acquisition date at fair value. Additionally, any contingent consideration was recorded at fair value on the acquisition date and classified as a liability. The Company recognized goodwill to the extent the consideration transferred exceeded the recognized basis of the identifiable assets acquired, net of assumed liabilities. Management exercised judgement in determining the fair value of assets acquired and liabilities assumed, which involved the use of significant estimates and assumptions, including future cash flows, discount rates, and asset lives.

**Internal-use Software**—The Company incurs costs related to internal-use software and website development. Costs incurred in both the preliminary project stage and post-implementation stage of development are expensed as incurred. Qualifying development costs, including those incurred for upgrades and enhancements that result in additional functionality to existing software, are capitalized. Capitalized development costs are classified as Intangible assets – net on the Consolidated Balance Sheets and amortized using the straight-line method over the estimated useful life of the applicable software. The amortization is presented in Depreciation and amortization expense in the Statements of Operations and Comprehensive Loss.

**Accrued Customer Credits**—We may issue credits to customers for cancelled events that can be applied to future purchases on our marketplace. The amount recognized in Accrued expenses and other current liabilities in the Consolidated Balance Sheets represents the balance owed to customers on credit. Breakage income from customer credits that are not expected to be used is estimated and recognized as revenue in proportion to the pattern of redemption for the customer credits that are used. When customer credits are used to make a purchase, revenue is recognized.

**Accrued Future Customer Compensation**—Provisions for accrued future customer compensation are included in Accrued expenses and other current liabilities in the Consolidated Balance Sheets and represent compensation to be paid to customers for event cancellations or other service issues related to previously recorded sales transactions. The expected recoveries of these obligations are included in Prepaid expenses and other current assets. These provisions are based on historic experience and recent revenue volumes and are recognized as a component of Revenue. This estimated accrual could be impacted by future activity differing from our estimates, the effects of which could be material to the consolidated financial statements.

**Taxes**—The Company is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, the Company's taxable income or loss is passed through to and included in the taxable income of its members. Accordingly, no income tax expense has been recorded for federal, state and local jurisdictions. Certain states and localities have gross receipts taxes, franchise taxes and minimum filings taxes that are assessed on pass-through entities. The Company is subject to these taxes and recognized expense for \$831 thousand and \$230 thousand for the years ended December 31, 2019 and 2020, respectively. The expense is presented in General and administrative expenses in the Statements of Operations and Comprehensive Loss.

The Company is subject to partnership audit rules enacted as part of the Bipartisan Budget Act of 2015 (the "Centralized Partnership Audit Regime"). Under the Centralized Partnership Audit Regime, any IRS audit of the Company would be conducted at the Company level, and if the IRS determines an adjustment, the default rule is that the Company would pay an "imputed underpayment" including interest and penalties, if applicable. The Company may instead elect to make a "push-out" election, in which case the partners for the year that is under audit would be required to take into account the adjustments on their own personal income tax returns.

The Hoya Intermediate, LLC Agreement stipulates that, if the Company receives an imputed underpayment, each Unit holder shall promptly file an amended tax return and pay any tax and interest due.

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As of December 31, 2019 and 2020, there were no uncertain tax positions taken or expected to be taken that would require recognition of a liability in the consolidated financial statements. The Company is subject to routine audits by taxing jurisdictions. The periods subject to tax audits are 2017 through 2020. There are currently no audits for any tax periods in progress.

**Debt**—Term debt is carried at the outstanding principal balance, less debt issuance costs and any unamortized discount or premium. Deferred borrowing costs and discounts are amortized to interest expense over the terms of the respective borrowings using the effective interest method.

**Derivatives**—The Company recognizes derivatives on the Consolidated Balance Sheets at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting, and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting.

Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Hedge accounting generally provides for the matching of the timing of the gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the earnings effect of the hedged forecasted transactions in a cash flow hedge. The Company formally evaluates, both at the inception of the hedge and quarterly, whether the derivative financial instrument is highly effective in offsetting changes in cash flows of the related underlying exposure.

For derivatives that are designated as, and meet all the required criteria for, a cash flow hedge, the net interest payments are recorded in Interest expense – net in the Consolidated Statements of Operations and Comprehensive Loss and the remaining changes in the fair value are recorded in Accumulated other comprehensive loss (“AOCL”) in the Consolidated Balance Sheets and reclassified into earnings as the underlying hedged item affects earnings.

Derivative instruments are classified within Prepaid expenses and other current assets or Other liabilities in the Consolidated Balance Sheets depending on the nature of the balance at the end of the period.

**Fair Value of Financial Instruments**—Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value of our financial instruments is disclosed based on the fair value hierarchy using the following three categories:

**Level 1**—Measurements that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

**Level 2**—Measurements that include other inputs that are directly or indirectly observable in the marketplace.

**Level 3**—Measurements derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These fair value measurements require significant judgment.

**Equity-Based Compensation**—Certain members of management have been awarded grants of common units of our parent Hoya Topco, LLC or Phantom units in a cash bonus pool. Under the Accounting Standard Codification (“ASC”) 718, *Compensation–Stock Compensation*, and ASC 480, *Distinguishing Liabilities from Equity*, the grants of common units meet the criteria to be recognized by Hoya Topco, LLC as equity-classified awards, whereas the grants of Phantom units meet the criteria to be recognized as liability-classified awards. Equity-classified awards include those that may be settled either in a determinable number of common units or in cash at the sole discretion of our parent. Liability-classified awards may only be settled in cash.

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Equity-based compensation is measured at fair value on the grant date. The Company recognizes compensation expense on a straight-line basis over the requisite service period, which is the award's vesting period, and an offsetting deemed contribution to equity to reflect these incentive units of our parent. Vesting of these awards is accelerated in the event of a change in control of Hoya Topco, LLC. The Company accounts for forfeitures as they occur.

A market-based approach was used to determine the total equity value of our parent and allocate the resulting value between classes using an option pricing model to determine the grant date fair value of employee grants. The exercise prices used are based on various scenarios considering the waterfall payout structure of the units that exists at the Hoya Topco, LLC level.

For liability-based compensation with service and performance conditions, the Company recognizes a liability for the fair value of the outstanding units only when the Company concludes it is probable that the performance condition will be achieved. As of December 31, 2019 and 2020, it is not probable the performance condition will be achieved.

**Net Loss Per Unit Attributable to Common Unit holders**—Basic earnings/loss per unit is computed by dividing the net loss attributable to common unit holders by the weighted-average number of common units outstanding during the period. Diluted earnings/loss per unit is computed by giving effect to all potentially dilutive common equivalent units outstanding for the period. In periods of a net loss, common equivalent units are excluded from the calculation of diluted earnings/loss per unit, because their inclusion would have an antidilutive effect. Accordingly, for periods in which we report a net loss, diluted earnings/loss per unit is equal to basic earnings/loss per unit, as the dilutive common equivalent units are not assumed to have been issued if their effect is antidilutive.

**Segment Reporting**—Operating segments are defined as components of an entity for which discrete financial information is available and is regularly reviewed by the Chief Operating Decision Maker ("CODM") in making decisions regarding resource allocation and performance assessment. The Company's CODM is its Chief Executive Officer. The Company has determined it has two operating and reportable segments: Marketplace and Resale.

**Revenue Recognition**—The Company recognizes revenue in accordance with ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"). The Company adopted ASC 606 effective January 1, 2019, using the full retrospective transition method.

The Company reports revenue on a gross or net basis based on management's assessment of the Company acting as a principal or agent in the transaction. The determination of the Company acting as a principal or an agent in a transaction is based on the evaluation of control over the ticket, including the right to sell the ticket, before it is transferred to the ticket buyer.

### *Marketplace*

The Company acts as an intermediary between ticket sellers and ticket buyers in its secondary marketplace. Revenue primarily consists of service fees from ticketing operations and is reduced by incentives provided to ticket buyers.

The Company has one primary performance obligation, facilitating the Marketplace transaction between the ticket seller and ticket buyer, which is satisfied at the time the order is confirmed. In this transaction, the Company acts as an agent as it does not control the ticket prior to it transferring to the ticket buyer.

Revenue is recognized net of the amount due to the seller when the ticket seller confirms an order with the ticket buyer, at which point the seller is obligated to deliver the tickets to the buyer in accordance with the original marketplace listing. Payment from the buyer is due at the time of sale.

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The Company's sales terms provide that the Company will compensate the buyer for the total amount of the purchase if an event is cancelled, the ticket is invalid, or if the ticket is delivered after the promised time. The Company has determined this is considered a stand-ready obligation to provide a return that is not a separate performance obligation, but is an element of variable consideration, which results in a reduction to revenue. The revenue reversal is reflected within Accrued expenses and other current liabilities in the Consolidated Balance Sheets when the buyer has yet to be compensated. The Company estimates the customer compensation liability, and corresponding charge against revenue, using the expected value method, which best predicts customer compensation for future cancellations. To the extent we estimate that a portion of the refund is recoverable from the ticket seller, we record the recovery as revenue to align with the net presentation of the original transaction. The timing of event cancellations and rescheduling of postponed events versus new sales transactions can result in customer compensation costs exceeding current period sales resulting in negative marketplace revenue for that period.

The Company also earns referral commissions on purchases of third-party insurance services by ticket buyers at the time of sale of the associated ticket on the Marketplace platform. Referral commissions are recognized as revenue when the ticket buyer makes a purchase from the third-party merchant during customer checkout. Payment from the third-party provider is due to the Company net 30 from when invoiced. This revenue is included within all categories of Marketplace disaggregated revenue described in Note 3, *Revenue Recognition*.

### *Resale*

The Company sells tickets it owns on secondary ticket marketplaces. The Resale business has one performance obligation, which is to transfer control of a live event ticket to a ticket buyer once an order has been confirmed.

The Company acts as a principal in these transactions as it owns the ticket and therefore controls the ticket prior to transferring the ticket to the customer. Revenue is recorded on a gross basis based on the value of the ticket and is recognized when an order is confirmed in the secondary ticket marketplace. Payment from the marketplace is typically due upon delivery of the ticket or after the event has passed.

Secondary marketplace terms and conditions require sellers to repay amounts received for events that are cancelled or tickets that are invalid or delivered after the promised time. The Company has determined that this obligation is a stand-ready obligation to provide a return that is not a separate performance obligation, but is an element of variable consideration, which results in a reduction to revenue. The Company recognizes a liability for known and estimated cancellation charges within Accrued expenses and other current liabilities in the Consolidated Balance Sheets. The Company estimates the future customer compensation liability, and corresponding charge against revenue, using the expected value method. To the extent we estimate that a portion of the charge is recoverable from the event host, we record the estimated recovery asset to Prepaid expenses and other current assets.

When the Company's Resale business sells a ticket on its own marketplace, the service fee is recorded in Marketplace revenues and the sales price of the ticket is recorded in Resale revenues.

### *Deferred Revenue*

Deferred revenue consists of fees received related to unsatisfied performance obligations at the end of the period. Due to the generally short-term duration of contracts, the majority of the performance obligations are satisfied in the following year.

The Company's loyalty program allows customers to earn credits on certain purchases and then redeem those credits on future transactions. The credits earned in the program represent a material right to the customer and constitute an additional performance obligation of the Company. As such, the Company defers revenue based on



expected future usage and recognizes the deferred revenue as credits are redeemed. Breakage income from credits that are not expected to be used is estimated and recognized as revenue in proportion to the pattern of redemption for the customer credits that are used.

Cash received for contingent events, such as postseason sporting events, is initially recorded as Deferred revenue in the Consolidated Balance Sheets and is recognized as revenue when the contingency is resolved.

**Advertising Costs**—The Company utilizes various forms of advertising, including paid search, sponsorship agreements, e-mail marketing, and other forms of media. Advertising costs are expensed as incurred and were \$175,926 thousand and \$37,524 thousand for the years ended December 31, 2019 and 2020, respectively. Advertising costs are presented as part of Marketing and selling expense in the Consolidated Statements of Operations and Comprehensive Loss.

**Shipping and Handling**—Shipping and handling charges to customers are included in Revenues in the Consolidated Statements of Operations and Comprehensive Loss. Shipping and handling costs incurred by the Company are treated as fulfillment activities, and as such are included in Cost of revenues in the Consolidated Statements of Operations and Comprehensive Loss. These costs are accrued upon recognition of revenue.

#### Recent Accounting Pronouncements

As an “emerging growth company” under the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), the Company is provided the option to adopt new or revised accounting guidance either (1) within the same periods as those otherwise applicable to public business entities, or (2) within the same time periods as non-public business entities, including early adoption when permissible. The following provides a brief description of recent accounting pronouncements that could have a material effect on the Company’s financial statements:

##### *Accounting pronouncements recently adopted*

**Cloud Computing Arrangements**—In August 2018, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) 2018-15, *Cloud Computing Arrangements*, which aligns the accounting for costs incurred to implement a cloud computing arrangement that is a service arrangement with the guidance on capitalizing costs associated with developing or obtaining internal-use software. The Company adopted ASU 2018-15 effective January 1, 2020 and the impact of adoption was not material to the Company’s consolidated financial statements.

##### *Issued accounting standards not yet adopted*

**Leases**—In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to recognize a right-of-use asset and a lease liability for virtually all of their leases (other than leases that meet the definition of a short-term lease) in the Consolidated Balance Sheets. The liability will be equal to the present value of lease payments. The asset will be based on the liability, subject to adjustment, such as for initial direct costs. ASU 2020-05, *Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities*, deferred the effective date for non-public companies. ASU 2016-02 is effective for fiscal periods beginning after December 15, 2021. The Company elected the extended transition period available to emerging growth companies and is currently evaluating the effect of adoption of the standard on the Company’s consolidated financial statements and related disclosures.

**Financial Instruments-Credit Losses**—In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which changes how entities will measure credit losses for financial assets and certain other instruments that are not measured at fair value through net income. The new expected credit loss impairment model requires immediate recognition of estimated

credit losses expected to occur. Additional disclosures are required regarding assumptions, models, and methods for estimating the credit losses. ASU 2019-10, *Financial Instruments-Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates*, deferred the effective date for non-public companies. The standard is effective for non-public companies for fiscal years beginning after December 15, 2022. The Company elected the extended transition period available to emerging growth companies and is currently evaluating the effect of adoption of the standard on the Company's consolidated financial statements and related disclosures.

**Reference Rate Reform**—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*, as modified in January 2021. The ASU is intended to help stakeholders during the global market-wide reference rate transition period. The new guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued. The guidance also establishes (1) a general contract modification principle that entities can apply in other areas that may be affected by reference rate reform and (2) certain elective hedge accounting expedients. The optional amendments are effective for all entities as of March 12, 2020 and can be adopted through December 31, 2022. The Company has not yet decided the date of adoption of this standard. LIBOR is used to calculate the interest on borrowings under the Company's June 2017 First Lien Loan and May 2020 First Lien Loan. The Company is currently evaluating whether this guidance will have a significant impact on its consolidated financial statements and related disclosures.

### 3. REVENUE RECOGNITION

The Company recognizes revenue in accordance with ASC 606. The Company has two reportable segments: Marketplace and Resale.

Within the Marketplace segment, the Company earns revenue by acting as an intermediary between ticket sellers and ticket buyers. In this capacity, the Company recognizes revenue for transactions occurring on its website and mobile app (Owned Properties), in addition to fees generated through the sale of tickets on partner sites using the Company's platform (Private Label).

During 2019 and 2020, Marketplace revenues consisted of the following (in thousands):

	Years Ended December 31,	
	2019	2020
Marketplace revenues:		
Owned Properties	\$329,262	\$24,188
Private Label	74,383	(907)
<b>Total Marketplace revenues</b>	<b>\$403,645</b>	<b>\$23,281</b>

When assessing the performance of the business, the Company's CODM also reviews Marketplace revenues generated by event category. During 2019 and 2020, Marketplace revenues consisted of the following event categories (in thousands):

	Years Ended December 31,	
	2019	2020
Marketplace revenues:		
Concerts	\$187,753	\$15,775
Sports	169,577	3,484
Theater	44,754	3,759
Other	1,561	263
<b>Total Marketplace revenues</b>	<b>\$403,645</b>	<b>\$23,281</b>

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Within the Resale segment, the Company sells tickets it owns on secondary ticket marketplaces, including its own website and mobile app. Resale revenues were \$65,280 thousand and \$11,796 thousand during for the years ended December 31, 2019 and 2020, respectively, and are presented in Revenues in the Consolidated Statements of Operations and Comprehensive Loss.

At December 31, 2019, \$5,932 thousand was recorded as deferred revenue, of which \$3,560 thousand was recognized as revenue during the year ended December 31, 2020. At December 31, 2020, the related balance was \$5,956 thousand. The Company's deferred revenue balance primarily relates to the loyalty program and is presented in Deferred revenue in the Consolidated Balance Sheets.

Deferred revenue for contingent events at December 31, 2019 and 2020 was immaterial.

#### 4. PROPERTY AND EQUIPMENT

Long-lived asset impairment charges related to property and equipment of \$3,670 thousand were recognized for the year ended December 31, 2020, resulting in a full impairment of all property and equipment. The impairment charges are presented in Impairment charges in the Consolidated Statements of Operations and Comprehensive Loss.

The following table summarizes our major classes of property and equipment, net of accumulated depreciation at December 31, 2019 (in thousands):

Leasehold Improvements	\$3,721
Computer Equipment	1,901
Furniture and Fixtures	556
Purchased Software	47
<b>Total property and equipment</b>	<b>6,225</b>
Less: accumulated depreciation	2,209
<b>Total property and equipment – net</b>	<b><u>\$4,016</u></b>

Depreciation expense related to property and equipment was \$1,095 thousand and \$643 thousand for the years ended December 31, 2019 and 2020, respectively, and is presented in Depreciation and amortization expense in the Consolidated Statements of Operations and Comprehensive Loss. There were no impairment charges for the year ended December 31, 2019.

#### 5. SEGMENT REPORTING

For all periods presented, our reportable segments are Marketplace and Resale. Through the Marketplace segment, the Company acts as an intermediary between ticket sellers and ticket buyers within its secondary marketplace. Through the Resale segment, the Company generates revenue by acquiring tickets from primary sellers, which it then sells through secondary ticket marketplaces. Revenues and contribution margin are used by the Company's CODM to assess performance of the business. The Company defines contribution margin as revenues less cost of revenues and marketing and selling expenses.

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We do not report our assets, capital expenditures, or related depreciation and amortization expenses by segment, because our CODM does not use this information to evaluate operating segments. The following table represents our segment information for the year ended December 31, 2019 (in thousands):

	<u>Marketplace</u>	<u>Resale</u>	<u>Consolidated</u>
Revenues	\$ 403,645	\$65,280	\$ 468,925
Cost of revenues (exclusive of depreciation and amortization shown separately below)	50,533	52,801	103,334
Marketing and selling	178,446	—	178,446
<b>Contribution margin</b>	<b>\$ 174,666</b>	<b>\$12,479</b>	<b>187,145</b>
General and administrative			104,004
Depreciation and amortization			93,078
<b>Loss from operations</b>			<b>(9,937)</b>
Interest expense – net			41,497
Loss on extinguishment of debt			2,414
<b>Net loss</b>			<b>\$ (53,848)</b>

The following table represents our segment information for the year ended December 31, 2020 (in thousands):

	<u>Marketplace</u>	<u>Resale</u>	<u>Consolidated</u>
Revenues	\$ 23,281	\$11,796	\$ 35,077
Cost of revenues (exclusive of depreciation and amortization shown separately below)	12,273	10,664	22,937
Marketing and selling	38,121	—	38,121
<b>Contribution margin</b>	<b>\$ (27,113)</b>	<b>\$ 1,132</b>	<b>(25,981)</b>
General and administrative			67,952
Depreciation and amortization			48,247
Impairment charges			573,838
<b>Loss from operations</b>			<b>(716,018)</b>
Interest expense – net			57,482
Loss on extinguishment of debt			685
<b>Net loss</b>			<b>\$ (774,185)</b>

Substantially all of the Company's sales occur and assets reside in the United States.

## 6. ACQUISITION

On April 11, 2019, the Company acquired all of the outstanding equity of Fanxchange Limited, a Canadian-based online ticket distribution marketplace, for total consideration of \$31,118 thousand, net of cash acquired. This acquisition served to complement the Company's marketplace with its distribution partners and technology. As it was a business combination in accordance with ASC 805, *Business Combinations*, it was accounted for using the acquisition method of accounting. The purchase price was finalized in 2019.

Transaction costs incurred related to this acquisition were immaterial and were recognized as a period expense within General and administrative expense in the Consolidated Statements of Operations and Comprehensive Loss.

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The following table summarizes the consideration paid and the fair values of the assets acquired, and liabilities assumed (in thousands):

<b>Allocation of purchase price</b>	
Cash and cash equivalents	\$ 3,130
Other current assets	776
Property and equipment	277
Intangible asset – developed technology	4,900
Intangible assets – other	4,800
Goodwill	21,244
<b>Total assets acquired</b>	<b>35,127</b>
Current liabilities assumed	879
<b>Net assets acquired</b>	<b>\$ 34,248</b>

## 7. GOODWILL AND INTANGIBLE ASSETS

The Company has two operating segments, Marketplace and Resale, which consist of a single reporting unit each. The Company's goodwill is recorded on the Company's Marketplace operating segment and reporting unit.

Definite-lived intangible assets consisted of the following at December 31, 2019 and 2020 (in thousands):

	December 31, 2019			December 31, 2020		
	Cost	Accumulated Amortization	Net Carrying amount	Cost	Accumulated Amortization	Net Carrying amount
Developed Technology	\$ 158,759	\$ (75,458)	\$ 83,301	\$ 2,622	\$ (264)	\$ 2,358
Supplier Relationships	137,200	(84,612)	52,588	—	—	—
Customer Relationships	71,300	(58,134)	13,166	—	—	—
Non-compete Agreements	5,360	(4,467)	893	—	—	—
<b>Total definite-lived intangibles assets</b>	<b>\$ 372,619</b>	<b>\$ (222,671)</b>	<b>\$ 149,948</b>	<b>\$ 2,622</b>	<b>\$ (264)</b>	<b>\$ 2,358</b>

The net changes in the carrying amounts of the Company's intangible assets and goodwill were as follows (in thousands):

	Definite-lived Intangible Assets	Trademark	Goodwill
<b>Balances at January 1, 2019</b>	<b>\$ 224,777</b>	<b>\$ 143,400</b>	<b>\$ 1,039,184</b>
Acquisition	9,700	—	21,244
Capitalized development costs	7,949	—	—
Disposals	(983)	—	—
Amortization	(91,495)	—	—
<b>Balances at December 31, 2019</b>	<b>149,948</b>	<b>143,400</b>	<b>1,060,428</b>
Capitalized development costs	7,264	—	—
Impairment	(107,365)	(78,734)	(377,101)
Disposals	(124)	—	—
Amortization	(47,365)	—	—
<b>Balances at December 31, 2020</b>	<b>\$ 2,358</b>	<b>\$ 64,666</b>	<b>\$ 683,327</b>

Amortization expense on the definite-lived intangible assets was \$91,495 thousand and \$47,365 thousand for the years ended December 31, 2019 and 2020, respectively, and is presented in Depreciation and amortization expense in the Statements of Operations and Comprehensive Loss.

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The estimated future amortization expense related to the definite-lived intangible assets as of December 31, 2020 is as follows (in thousands):

2021	\$ 872
2022	872
2023	614
<b>Total</b>	<b><u>\$2,358</u></b>

The Company recorded an impairment to its goodwill and intangible assets during 2020. Refer to Note 8, *Impairments*, for additional information. There were no impairments recorded during 2019.

### 8. IMPAIRMENTS

As disclosed in Note 2, *Significant Accounting Policies*, the Company assesses goodwill and other indefinite-lived intangible assets for impairment annually, or more frequently if events or changes in circumstances indicate that an asset may be impaired. Definite-lived intangible assets and other long-lived assets are assessed for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable.

During the second quarter of 2020, the Company identified the COVID-19 pandemic as a triggering event for its long-lived assets, goodwill, indefinite-lived trademark, and definite-lived intangible assets. Due to global social distancing efforts, put in place to mitigate the spread of the virus, and compliance with restrictions enacted by various governmental entities, most live events during 2020 were either postponed or cancelled. Consequently, the Company experienced a significant reduction of revenue during the second quarter of 2020, which continued through the remainder of the year. The Company anticipates that the COVID-19 pandemic and mitigation policies enacted by governmental entities will continue to have a material impact on its cash flows.

The following summarizes the impairment charges recorded by the Company during the second quarter of 2020 (in thousands):

Goodwill	\$ 377,101
Indefinite lived trademark	78,734
Definite lived intangible assets	107,365
Property and equipment	3,670
Personal seat licenses	6,968
<b>Total impairment charges</b>	<b><u>\$ 573,838</u></b>

#### *Long-lived asset impairments*

The Company assessed its long-lived assets for potential impairment during the second quarter of 2020. ASC 360, *Property, Plant, and Equipment*, requires an impairment loss to be recognized for a long-lived asset if the carrying amount of the asset is not recoverable and exceeds its fair value. In accordance with ASC 360, the Company classifies its long-lived assets as a single asset group, which consists primarily of property and equipment, right-of-use lease assets, personal seat licenses, and definite-lived intangible assets.

For the fair value of the asset group, we compared the expected future undiscounted cash flows associated with the asset group to the long-lived asset group's carrying value and concluded that the carrying value was not recoverable. The Company then measured the fair value of the asset group using a discounted cash flow model. The significant estimates used in the undiscounted and discounted cash flow models include projected operating cash flows; forecasted capital expenditures and working capital needs; rates of long-term growth; and the

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discount rate (in the discounted cash flow model). The significant unobservable inputs included forecasted revenues which reflected significant declines in earlier years as a result of the pandemic and included estimates regarding when revenue would return to pre-pandemic levels. The significant unobservable inputs also included forecasted costs, capital expenditures, and working capital needs which were informed by actual historical experience and estimates of the timing of when live events would return to pre-pandemic levels. Refer to Note 12, *Fair Value*, for quantitative disclosure of significant unobservable inputs. As a result, the Company recorded an impairment of \$118,003 thousand, of which \$107,365 thousand was related to definite-lived intangible assets. The impairment is presented in Impairment charges in the Consolidated Statements of Operations and Comprehensive Loss.

### *Indefinite-lived trademark and goodwill impairments*

During the second quarter of 2020, the Company determined that the estimated carrying value of its indefinite-lived trademark was in excess of its fair value. The fair value of the indefinite-lived trademark asset, classified as a Level 3 measurement, was measured using the relief-from-royalty method. This methodology involves estimating reasonable royalty rates for the trademarks, applying the royalty rate to a net sales stream, and utilizing the discounted cash flow method. The Company utilized a 2.0% royalty rate, consistent with the rate used in the initial valuation of the trademark. The Company recorded an impairment charge of \$78,734 thousand related to the indefinite-lived trademark. The impairment charge is presented in Impairment charges in the Consolidated Statements of Operations and Comprehensive Loss.

As part of the goodwill impairment assessment performed during the second quarter of 2020, the Company determined that the carrying value of its Marketplace reporting unit exceeded its estimated fair value, resulting in a goodwill impairment charge of \$377,101 thousand, which is presented in Impairment charges in the Consolidated Statements of Operations and Comprehensive Loss. The fair value estimate of our reporting units was based on a blended analysis of the present value of future discounted cash flows and market value approach, using Level 3 inputs. The significant estimates used in the discounted cash flow models are projected operating cash flows; forecasted capital expenditures and working capital needs; weighted average cost of capital; and rates of long-term growth. These estimates considered the recent deterioration in financial performance of the reporting units, as well as the anticipated rate of recovery, and implied risk premiums based on the market prices of our equity and debt as of the assessment date. The significant estimates used in the market multiple valuation approach include identifying business factors; such as size, growth, profitability, risk and return on investment; and assessing comparable revenue and earnings multiples. Following the impairment charge, the carrying value of the Marketplace reporting unit's goodwill was \$683,327 thousand. In accordance with its annual re-assessment, the Company assessed its goodwill and indefinite-lived trademark for impairment as of October 31, 2020, determining no further impairment had occurred.

The Company's goodwill and indefinite-lived trademark constitute nonfinancial assets measured at fair value on a nonrecurring basis. These nonfinancial assets are classified as Level 3 assets in the fair value hierarchy established under ASC Topic 820, *Fair Value Measurement* ("ASC 820").

## 9. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets at December 31, 2019 and 2020 consist of the following (in thousands):

	2019	2020
Recovery of future customer compensation	\$ 6,662	\$ 75,257
Insurance recovery asset	—	2,500
Prepaid expenses	5,410	2,309
<b>Total prepaid expenses and other current assets</b>	<b>\$ 12,072</b>	<b>\$ 80,066</b>

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Recovery of future customer compensation represents expected recoveries of compensation to be paid to customers for event cancellations or other service issues related to previously recorded sales transactions.

### 10. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities at December 31, 2019 and 2020 consist of the following (in thousands):

	2019	2020
Marketing expense	\$12,044	\$ 1,086
Accrued tax	10,194	16,913
Accrued customer credits	—	125,481
Accrued future customer compensation	10,157	94,061
Other	27,613	18,593
<b>Total accrued expenses and other current liabilities</b>	<b>\$60,008</b>	<b>\$256,134</b>

Customer credits represent credits issued and outstanding for event cancellations or other service issues related to recorded sales transactions. The accrued amount is reduced by the amount of credits estimated to go unused, which is recognized in proportion to the pattern of redemption for the customer credits.

Future customer compensation represents an estimate of the amount of customer compensation due from cancellations in the future. These provisions are based on historic experience and recent revenue volumes and are recognized as a component of Revenues. The expected recoveries of these obligations are included in Prepaid expenses and other current assets in the Consolidated Balance Sheets. This estimated accrual could be impacted by future activity differing from our estimates, the effects of which could be material to the consolidated financial statements.

### 11. FINANCIAL INSTRUMENTS

#### Derivatives

At December 31, 2019, we held interest rate swaps and an interest rate cap. At December 31, 2020, we held an interest rate cap. The financial instruments were assessed as highly effective at inception and hedge accounting was applied. As such, the net interest payments accrued each month are included in Interest expense – net in the Consolidated Statements of Operations and Comprehensive Loss and the change in fair value is recorded as a component of AOCL in the Consolidated Balance Sheets.

The financial instruments entered into by the Company are typically executed over-the-counter. All financial instruments were measured at fair value on a recurring basis. The fair value is derived from discounted cash flows adjusted for nonperformance risk. The fair value models primarily use market observable inputs and, therefore, are classified as Level 2 assets. These models incorporate a variety of factors, including, where applicable, maturity, interest rate yield curves, and counterparty credit risks. The credit valuation adjustment associated with the derivatives, related to the likelihood of default by the Company and the counterparty, was not significant to the overall valuation. Refer to Note 12, *Fair Value*, for additional disclosure regarding fair value measurements.

#### Interest Rate Swaps

On November 10, 2017, the Company purchased pay-fixed, receive-float interest rate swaps with a combined notional value of \$520,688 thousand on September 30, 2020. The interest rate swaps were purchased to reduce a portion of the exposure to fluctuations in LIBOR interest rates associated with our variable-rate term loan. The interest rate swaps had a fixed rate of 1.9% and a maturity date of September 30, 2020.



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The objective in using the swaps was to add stability to interest expense and to manage the exposure to interest rate movements. The interest rate swaps are designated as effective cash flow hedges involving the receipt of variable amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreement without exchange of the underlying notional amount.

The Company performed a regression analysis at inception of the hedging relationship to assess the effectiveness. The design of the regression analysis addresses the effectiveness of the hedging relationship by considering how the hedge instrument performs against the forecasted transaction or hypothetical interest rate swaps historically over historical months. The changes in the fair value of the hedge instrument and the hedged item over the historical months demonstrated the effectiveness of the hedge relationship as the prospective and retrospective test. On an ongoing basis, the Company assessed hedge effectiveness prospectively and retrospectively. The hedge continued to be highly effective through its maturity date.

The interest rate swaps are recognized on a gross basis at fair value in the Consolidated Balance Sheets within Other liabilities at December 31, 2019. At December 31, 2019, interest rate swaps had a fair value of (\$887) thousand. The amount recognized in Interest expense — net in the Consolidated Statements of Operations and Comprehensive Loss was \$2,111 thousand of income and \$4,291 thousand of expense for the years ended December 31, 2019 and 2020, respectively.

### **Interest Rate Cap**

On November 26, 2018, the Company entered an interest rate cap with an effective date of September 30, 2020 and a maturity date of September 30, 2021. The Company paid \$1,030 thousand to enter into the cap. The notional value was \$518,719 thousand on December 31, 2020. The interest rate cap was purchased to reduce a portion of the exposure to fluctuations in LIBOR interest rates associated with our variable-rate term loan. The interest rate cap has a strike rate of 3.5%.

The objective in using the cap is to add stability to interest expense and to manage the exposure to interest rate movements. Interest rate caps involve the borrower paying the hedge provider an initial one-time fee in exchange for the hedge provider paying the borrower the excess of the floating interest rate payment above a strike rate, in the event that the floating interest rate is greater than the strike rate during the period between the effective date and maturity date.

The Company performed a regression analysis at inception of the hedging relationship to assess the effectiveness. The design of the regression analysis addressed the effectiveness of the hedging relationship by considering how the hedge instrument performs against the forecasted transaction or hypothetical interest rate cap over historical months. The changes in the fair value of the hedge instrument and the hedged item over the historical months demonstrated the effectiveness of the hedge relationship. On an ongoing basis, the Company assesses hedge effectiveness prospectively and retrospectively. The hedge continued to be highly effective through December 31, 2020.

The interest rate cap is measured at fair value and is recognized within Prepaid expenses and other current assets in the Consolidated Balance Sheets. The interest rate cap had a fair value of zero at December 31, 2019 and 2020.

The amount of loss expected to be reclassified into Interest expense — net in the Consolidated Statements of Operations and Comprehensive Loss within the next twelve months is \$822 thousand.

### **Effect of Derivative Contracts on Accumulated Other Comprehensive Loss and Earnings**

Since the Company designated the financial instruments as effective cash flow hedges that qualify for hedge accounting, net interest payments are recorded in Interest expense — net in the Consolidated Statements of Operations and Comprehensive Loss and unrealized gains or losses resulting from adjusting the financial

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instruments to fair value are recorded as a component of Other comprehensive income/(loss) and subsequently reclassified into earnings in the same period during which the hedged transaction affects earnings. During 2020, the Company reclassified losses of \$208 thousand into Interest expense – net from Accumulated other comprehensive loss related to the interest rate cap. Cash flows resulting from settlements are presented as a component of cash flows from operating activities within the Consolidated Statements of Cash Flows.

The following table presents the effects of hedge accounting on Accumulated other comprehensive loss for the year ended December 31, 2019 for interest rate contracts designated as cash flow hedges (in thousands):

	January 1, 2019	Amount of Loss Recognized in AOCL	Less: Amount of Loss Reclassified from AOCL to Income	December 31, 2019
Interest rate swaps	\$ 5,720	\$ (6,607)	\$ —	\$ (887)
Interest rate cap	(412)	(618)	—	(1,030)
<b>Total</b>	<b>\$ 5,308</b>	<b>\$ (7,225)</b>	<b>\$ —</b>	<b>\$ (1,917)</b>

The following table presents the effects of hedge accounting on Accumulated other comprehensive loss for the year ended December 31, 2020 for interest rate contracts designated as cash flow hedges (in thousands):

	December 31, 2019	Amount of Loss Recognized in AOCL	Less: Amount of Loss Reclassified from AOCL to Income	December 31, 2020
Interest rate swaps	\$ (887)	\$ 887	\$ —	\$ —
Interest rate cap	(1,030)	—	(208)	(822)
<b>Total</b>	<b>\$ (1,917)</b>	<b>\$ 887</b>	<b>\$ (208)</b>	<b>\$ (822)</b>

## 12. FAIR VALUE

### Recurring

Our financial assets and liabilities are valued using market prices on both active markets (Level 1), less active markets (Level 2) and little or no market activity (Level 3). Level 1 instrument valuations are obtained from unadjusted quoted prices for identical assets or liabilities in active markets. Level 2 instrument valuations are obtained from readily available pricing sources for comparable instruments, identical instruments in less active markets, or models using other inputs that are directly or indirectly observable in the marketplace. Level 3 instrument valuations typically reflect management's estimate of assumptions and are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. We did not have any transfers of financial instruments between valuation levels during 2019 or 2020.

Cash and cash equivalents include all cash balances and highly liquid investments purchased with maturities of three months or less. The Company's cash and cash equivalents consist primarily of domestic bank accounts, interest-bearing deposit accounts, and money market accounts managed by third-party financial institutions. Cash and cash equivalents are valued by the Company based on quoted prices in an active market, which represent a Level 1 measurement within the fair value hierarchy.

The fair value for our derivative instruments is based upon inputs corroborated by observable market data with similar tenors, which are considered Level 2 inputs. At December 31, 2019, interest rate swaps had a fair value of (\$887) thousand. The interest rate cap had a fair value of zero at December 31, 2019 and 2020. Refer to Note 11, *Financial Instruments*, for further details on our derivative instruments.

The Company's June 2017 First Lien Loan is held by a third-party financial institution and is carried at the outstanding principal balance, less debt issuance costs and any unamortized discount or premium. The fair value

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was estimated using quoted prices that are directly observable in the marketplace, therefore, the fair value is estimated on a Level 2 basis. As of December 31, 2019, the June 2017 First Lien Loan had a fair value of \$620,673 thousand as compared to the carrying amount of \$612,445 thousand. As of December 31, 2020, the June 2017 First Lien Loan had a fair value of \$583,145 thousand as compared to the carrying amount of \$609,080 thousand.

The Company's May 2020 First Lien Loan is not publicly traded and is carried at the outstanding principal balance, less debt issuance costs and any unamortized discount or premium. The fair value was estimated by discounting the future cash flows using current interest rates at which similar borrowings with similar maturities would be made to borrowers with similar credit ratings. The fair value was estimated assuming a prepayment of the loan upon the loan's third anniversary and is estimated on a Level 3 basis, as provided by ASC 820. As of December 31, 2020, the May 2020 First Lien Loan had a fair value of \$319,850 thousand as compared to the carrying amount of \$268,235 thousand.

Refer to Note 13, *Debt*, for key terms of the June 2017 First Lien Loan and the May 2020 First Lien Loan.

Other financial instruments, including accounts receivable and accounts payable, are carried at cost, which approximates their fair value because of the short-term nature of these instruments.

### Nonrecurring

Our non-financial assets, such as goodwill, intangible assets, and long-lived assets are measured at fair value on a nonrecurring basis, utilizing Level 3 inputs. The following table presents quantitative information about the significant unobservable inputs applied to these Level 3 fair value measurements:

Significant Unobservable Inputs	Range (Weighted Average)
Discount rate	12.5% - 13.5% (13.0%)
Long-term growth rate	2.5% - 3.5% (3.0%)

The following table presents the sensitivities to changes in the significant unobservable inputs above (in thousands):

	Goodwill	Trademark
50 basis point increase in discount rate	\$(37,680)	\$ (3,935)
50 basis point decrease in long-term growth rate	(21,344)	(2,298)

Refer to Note 8, *Impairments*, for disclosure of the Company's fair value methodologies for goodwill, intangibles assets, and long-lived assets.

### 13. DEBT

The Company's outstanding debt at December 31, 2019 and 2020 is comprised of the following (in thousands):

	2019	2020
June 2017 First Lien Loan	\$624,577	\$618,721
May 2020 First Lien Loan	—	275,678
<b>Total long-term debt, gross</b>	<b>624,577</b>	<b>894,399</b>
Less: unamortized debt issuance costs	(12,132)	(17,084)
<b>Total long-term debt, net of issuance costs</b>	<b>612,445</b>	<b>877,315</b>
Less: current portion	(5,856)	(6,412)
<b>Total long-term debt, net</b>	<b>\$606,589</b>	<b>\$870,903</b>

**First Lien Loans**—On June 30, 2017, the Company entered into a \$575,000 thousand first lien debt facility, comprised of a \$50,000 thousand revolving facility (the “Revolving Facility”) and a \$525,000 thousand term loan (the “June 2017 First Lien Loan”), and a second lien credit facility, comprised of a \$185,000 thousand second lien term loan (the “June 2017 Second Lien Loan”). The First Lien Loan was amended to upsize the committed amount by \$115,000 thousand on July 2, 2018. On October 28, 2019, the Company paid off its June 2017 Second Lien Loan balance. The underlying credit facility was subsequently retired on May 22, 2020.

On May 22, 2020, the Company entered into a new \$260,000 thousand first lien term loan (the “May 2020 First Lien Loan”) that is pari passu with the June 2017 First Lien Loan. The proceeds from the May 2020 First Lien Loan were used for general corporate purposes and to extinguish and retire the Revolving Facility in full.

All obligations under the June 2017 First Lien Loan and May 2020 First Lien Loan are unconditionally guaranteed by the Company and substantially all the Company’s existing and future direct and indirect wholly owned domestic subsidiaries.

The amortization of original issue discount and debt issuance costs on the June 2017 First Lien Loan and May 2020 First Lien Loan was \$2,860 thousand and \$3,655 thousand for the years ended December 31, 2019 and 2020, respectively, and is presented in Interest expense – net in the Consolidated Statements of Operations and Comprehensive Loss.

The key terms of the Company’s debt agreements are as follows:

**June 2017 First Lien Loan**—The June 2017 First Lien Loan matures on June 30, 2024 and requires quarterly amortization payments equal to approximately 1.0% of the original principal per annum. The Revolving Facility did not require periodic payments. All obligations under the June 2017 First Lien Loan are secured, subject to permitted liens and other exceptions, by first-priority perfected security interests in substantially all of the assets of the Company.

The June 2017 First Lien Loan is required to be prepaid, subject to certain exceptions, upon the following conditions: (i) up to 50.0% of excess cash flow subject to certain leverage ratios; (ii) all of the net cash proceeds of certain asset sales or insurance/condemnation events subject to certain leverage ratios; and (iii) all of the net cash proceeds of any issuance or incurrence of debt other than permitted debt.

At the Company’s option, the June 2017 First Lien Loan bears periodic interest of either (A) the LIBOR rate plus an applicable margin, ranging from 3.00% to 3.50% per annum based on the Company’s first lien net leverage ratio, or (B) the base rate plus an applicable margin, ranging from 2.00% to 2.50% per annum based on the Company’s first lien net leverage ratio. The LIBOR rate for the June 2017 First Lien Loan is subject to a 1.00% floor.

The effective interest rate on the June 2017 First Lien Loan was 5.3% and 4.5% per annum at December 31, 2019 and 2020, respectively.

**May 2020 First Lien Loan**—The May 2020 First Lien Loan matures on May 22, 2026, with springing maturity to June 30, 2024 if the June 2017 First Lien Loan, or a refinancing thereof with scheduled payments of principal prior to June 30, 2024, remains outstanding as of that date, and has no required amortization payments. All obligations under the May 2020 First Lien Loan are secured, subject to permitted liens and other exceptions, by first-priority perfected security interests in substantially all of the assets of the Company.

The May 2020 First Lien Loan is required to be prepaid, subject to certain exceptions, upon the following conditions: (i) up to 50.0% of excess cash flow subject to certain leverage ratios; (ii) all of the net cash proceeds of certain asset sales or insurance/condemnation events subject to certain leverage ratios; and (iii) all of the net cash proceeds of any issuance or incurrence of debt other than permitted debt.

The interest rate for the May 2020 First Lien Loan is determined using a LIBOR rate plus an applicable margin of 9.50% per annum, or a base rate plus an applicable margin of 8.50% per annum. The LIBOR rate

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is subject to a 1.00% floor and the base rate is subject to a 2.00% floor. For any period ending prior to May 22, 2022, the Company may submit paid-in-kind elections, whereby the entire outstanding balance will be charged interest at 11.50% per annum and interest amounts will be added to the outstanding principal. On and after May 22, 2022 but prior to May 22, 2023, the Company may submit paid-in-kind elections with respect to all or some of the outstanding balance, whereby the portion for which such paid-in-kind election was made will be charged interest at a rate equal to the sum of i) 5.0% per annum and ii) at the Borrower's election, a LIBOR rate plus an applicable margin of 5.00% per annum, or a base rate plus an applicable margin of 4.00% per annum. The effective interest rate on the May 2020 First Lien Loan was 11.50% per annum at December 31, 2020.

For certain prepayments and repricing transactions of the May 2020 First Lien Loan that occur prior to May 22, 2023, the Company would owe a prepayment penalty of 3.0% on the first \$91,000 thousand of prepayments. For prepayments greater than \$91,000 thousand prior to May 22, 2022, the amount exceeding \$91,000 thousand would be subject to a prepayment penalty equal to the greater of i) 6.0% and ii) the excess of the discounted measure of principal and interest due upon the second anniversary of the effective date and the outstanding principal at the time of the prepayment. For prepayments greater than \$91,000 thousand on or after May 22, 2022 and prior to May 22, 2023, the amount exceeding \$91,000 thousand would be subject to a prepayment penalty equal to 6.0%.

The following is a summary of activity related to debt instruments during the years ended December 31, 2019 and 2020:

**June 2017 First Lien Loan principal payments**—The Company made principal payments of \$6,967 thousand and \$5,856 thousand during the years ended December 31, 2019 and 2020, respectively.

**October 2019 Second Lien payoff**—On October 28, 2019, the Company paid off its remaining June 2017 Second Lien Loan balance using \$40,000 thousand of available cash. The debt extinguishment resulted in a loss of \$2,414 thousand and is presented in Loss on extinguishment of debt in the Consolidated Statements of Operations and Comprehensive Loss. The loss includes the remaining balance of the original issuance discount and issuance costs of \$2,014 thousand and a \$400 thousand prepayment penalty.

**Revolving Facility drawdown and repayment**—On March 17, 2020, the Company borrowed \$50,000 thousand using its Revolving Facility. This amount was repaid (and the Revolving Facility terminated in full) on May 22, 2020. The debt extinguishment resulted in a loss of \$685 thousand and is presented in Loss on extinguishment of debt in the Consolidated Statements of Operations and Comprehensive Loss.

**May 2020 First Lien Loan borrowing**—On May 22, 2020, the Company entered into the May 2020 First Lien Loan and used the proceeds to, among other things, repay and extinguish the Revolving Facility. The total original debt discount costs and original debt issuance costs related to the May 2020 First Lien Loan borrowing were \$6,500 thousand and \$1,979 thousand, respectively, and are presented in Long-term debt – net in the Consolidated Balance Sheets. As there is a springing maturity feature related to the May 2020 First Lien Loan, these costs are being amortized through June 30, 2024.

Future maturities of our outstanding debt, excluding interest, as of December 31, 2020 were as follows (in thousands):

2021	\$ 6,412
2022	6,412
2023	6,412
2024	875,163
2025	—
<b>Total</b>	<b><u>\$ 894,399</u></b>

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The Company is subject to certain reporting and compliance-related covenants to remain in good standing under the June 2017 First Lien Loan and May 2020 First Lien Loan. These covenants, among other things, limit the ability of the Company to incur additional indebtedness, and in certain circumstances, create restrictions on the ability to enter into transactions with affiliates; create liens; merge or consolidate; and make certain payments. Non-compliance with these covenants and failure to remedy could result in the acceleration of the loans or foreclosure on the collateral. As of December 31, 2020, the Company was in compliance with all of its debt covenants related to the June 2017 First Lien Loan and May 2020 First Lien Loan.

### 14. COMMITMENTS AND CONTINGENCIES

Our future minimum cash obligations as of December 31, 2020, were as follows (in thousands):

	2021	2022	2023	2024	2025	There- after	Total
Operating Leases	\$2,077	\$1,990	\$1,493	\$1,523	\$1,422	\$ —	\$ 8,505
Purchase obligations	3,346	2,903	1,114	—	—	—	7,363
<b>Total</b>	<b>\$5,423</b>	<b>\$4,893</b>	<b>\$2,607</b>	<b>\$1,523</b>	<b>\$1,422</b>	<b>\$ —</b>	<b>\$15,868</b>

**Operating Leases**—The Company leases office space under several non-cancelable operating leases expiring at various dates through November 2025. The leases require monthly rental payments, which escalate over the term of the leases. The Company is also responsible for its proportionate share of real estate taxes, insurance, and common area maintenance. Rent expense was \$2,749 thousand and \$2,815 thousand for the years ended December 31, 2019 and 2020, respectively, and is included in General and administrative expense in the Consolidated Statements of Operations and Comprehensive Loss.

Lease expense is recognized on a straight-line basis over the term of the lease. The excess of straight-line expense over cash paid is shown as a deferred rent liability and is recorded in Other liabilities in the Consolidated Balance Sheets.

The leases also require security deposits which are recorded as a component of Other non-current assets in the Consolidated Balance Sheets.

**Purchase Obligations**—The Company enters into non-cancelable arrangements with third parties, primarily related to the purchase of marketing services and tickets at an agreed upon price.

**Litigation**—The Company, from time to time, is involved in various claims and legal actions arising in the ordinary course of business, none of which, in the opinion of management, could have a material effect on the Company's business, financial position or results of operations other than those matters discussed herein.

The Company is a co-defendant in a class action lawsuit in Canada alleging illegal resale above face value. In August 2020, a settlement agreement was approved by the court and the Company paid \$277 thousand in fees and plaintiff's counsel costs, which are included in General and administrative expense in the Consolidated Statements of Operations and Comprehensive Loss. The Company is required to issue coupons to members of the class, which will take place once the court determines sufficient quantities of live events are occurring post-COVID-19 pandemic. At December 31, 2019 and 2020, a liability of \$1,360 thousand and \$1,083 thousand, respectively, was recorded, in Accrued expenses and other current liabilities in the Consolidated Balance Sheets related to the expected costs of fees, plaintiff's counsel costs and expected credit redemptions as of the measurement date.

The Company has received complaints regarding potential class action lawsuits related to customer compensation for cancellations, primarily as a result of COVID-19 restrictions. As of December 31, 2020, settlement negotiations were ongoing and the Company recorded a liability of \$2,550 thousand in Accrued expenses and other current liabilities in the Consolidated Balance Sheets related to these matters. In March 2021,

the Company reached a settlement agreement that is pending formal approval by the court. The Company expects to recover much of these costs under its insurance policies and has separately recognized an insurance recovery asset of \$2,500 thousand within Prepaid expenses and other current assets in the Consolidated Balance Sheets at December 31, 2020.

**Other**—In 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair Inc.*, which overturned previous case law that had precluded states from imposing sales tax collection requirements on retailers without a physical presence in the state. In response, several states have adopted laws that attempt to impose tax collection obligations on out-of-state companies. The Company is in the process of assessing its obligation and registration requirements in these jurisdictions. Pending these assessments, it is more likely than not some jurisdictions could assess taxes on transactions for which no sales tax was collected from the buyer at the time of the transaction. The Company has recognized a liability for this potential tax of \$9,988 thousand and \$16,818 thousand at December 31, 2019 and 2020, respectively. This liability is recorded in Accrued expenses and other current liabilities in the Consolidated Balance Sheets. No jurisdiction has assessed any amounts owed as of December 31, 2020.

#### 15. RELATED-PARTY TRANSACTIONS

In December 2020, Vivid Cheers Inc. (“Vivid Cheers”) was incorporated as a non-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code. Vivid Cheers’ mission is to support causes and organizations dedicated to healthcare, education, and support of workers in the live events industry during times of need. The Company has the right to elect the board of directors of Vivid Cheers, which is currently formed by the Company’s executives. The Company does not have a controlling financial interest in Vivid Cheers, and accordingly, does not consolidate Vivid Cheers’ statement of activities with its financial results. The Company committed charitable contributions of \$450 thousand for the year ended December 31, 2020 to Vivid Cheers which were payable as of that date.

#### 16. EMPLOYEE BENEFIT PLAN

The Company has a defined contribution and profit-sharing 401(k) plan that covers substantially all employees who meet eligibility requirements. Participants may contribute to the plan, through regular payroll deductions, an amount subject to limitations imposed by the Internal Revenue Code. The plan also provides for discretionary profit sharing contributions and matching contributions. The Company contributed approximately \$1,147 thousand and \$887 thousand in matching contributions for the years ended December 31, 2019 and 2020, respectively, and is included in General and administrative expense in the Consolidated Statements of Operations and Comprehensive Loss. For the years ended December 31, 2019, and 2020, there were no discretionary profit-sharing contributions.

#### 17. EQUITY-BASED COMPENSATION

Certain members of management received equity-based compensation awards for units of our parent, Hoya Topco, LLC. These awards included grants in the form of Class B-1 Incentive Units, Phantom Units, Class D Units, and Class E Units. There are an unlimited number of incentive units of our parent authorized for issuance. Each incentive unit vests ratably over five years with 20.0% vesting each year and accelerates upon a change in control of Hoya Topco, LLC. Class B-1 Incentive Units, Class D Units, and Class E Units are subject only to service conditions, whereas Phantom Units are subject to service conditions and a performance condition related to a change in control of Hoya Topco, LLC.

Hoya Topco, LLC has the option to repurchase all or any portion of outstanding and vested Class B-1 Incentive Units, Class D Units, and Class E Units by providing notice within seven months of an employee unit holder’s separation. Hoya Topco, LLC repurchased 6,000 and 97,604 Class D Units during the years ended December 31, 2019 and 2020, respectively. We recorded the repurchase of 6,000 and 7,604 Units as a deemed distribution to

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our parent during the years ended December 31, 2019 and 2020, respectively. Distributions to parent were \$8,095 thousand and \$120 thousand during the years ended December 31, 2019 and 2020, respectively.

Compensation expense associated with these incentive units for the years ended December 31, 2019 and 2020 was \$5,174 thousand and \$4,287 thousand, respectively, and is recorded within General and administrative expense in the Consolidated Statements of Operations and Comprehensive Loss. We record compensation expense and an offsetting deemed contribution to equity to reflect these incentive units of our parent. For the years ended December 31, 2019 and 2020, there was no compensation expense associated with Phantom Units as the performance condition of the units was not probable of being achieved.

Based on the ranking of the incentive units in the waterfall payout structure of Hoya Topco, LLC, and subject to a distribution threshold, B-1 incentive unit holders are entitled to preferential distributions when either it is declared by our parent or a trade sale or change in control occurs. Class D and Class E units do not have such preferential rights.

The following table summarizes the activity for the Hoya Topco, LLC Class B-1 Incentive Units, Class D Units, and Class E Units for the years ended December 31, 2019 and 2020:

	Class B-1 Units		Class D Units		Class E Units	
	Number of Incentive Units	Weighted Average Grant Date Fair Value	Number of Incentive Units	Weighted Average Grant Date Fair Value	Number of Incentive Units	Weighted Average Grant Date Fair Value
<b>Balances at January 1, 2019</b>	—	\$ —	<b>666,150</b>	<b>\$ 15.65</b>	<b>500,765</b>	<b>\$ 25.46</b>
Units granted	—	—	218,000	15.50	—	—
Units repurchased	—	—	(6,000)	15.28	—	—
Units forfeited	—	—	(45,640)	15.42	—	—
<b>Balances at December 31, 2019</b>	—	\$ —	<b>832,510</b>	<b>\$ 15.63</b>	<b>500,765</b>	<b>\$ 25.46</b>
Units granted	905,000	2.32	1,755,000	0.89	—	—
Units repurchased	—	—	(97,604)	15.95	—	—
Units forfeited	(50,000)	2.32	(441,666)	7.81	—	—
<b>Balances at December 31, 2020</b>	<b>855,000</b>	<b>\$ 2.32</b>	<b>2,048,240</b>	<b>\$ 4.67</b>	<b>500,765</b>	<b>\$ 25.46</b>

For the year ended December 31, 2020, there were no Class B-1 Incentive Units vested. For the year ended December 31, 2019, there were 204,164 Class D Units and 100,153 Class E Units vested with a weighted average grant date fair value of \$15.78 and \$25.46, respectively. For the year ended December 31, 2020, there were 236,736 Class D Units and 200,306 Class E Units vested with a weighted average grant date fair value of \$15.58 and \$25.46, respectively.

For the year ended December 31, 2019, there were 628,346 Class D Units and 400,612 Class E Units nonvested with a weighted average grant date fair value of \$15.58 and \$25.46, respectively. For the year ended December 31, 2020, there were 855,000 Class B-1 Incentive Units, 1,811,504 Class D Units, and 300,459 Class E Units nonvested with a weighted average grant date fair value of \$2.32, \$3.24, and \$25.46, respectively.

The fair value of each unit award is estimated on the date of grant using an option pricing model. The assumptions used in the option pricing model include multiple variables that require significant judgment. The Company's estimated volatility is based on the historical volatility of similar public companies' stock price over a preceding period commensurate with the expected term of the incentive units. The Company estimated the expected term of the incentive units considering the timing and probabilities of a liquidity event. The risk-free interest rate for the expected term of the incentive units is based on the U.S. Treasury yield curve, with maturities similar to the expected term of the incentive units, in effect at the time of grant. The Company also estimated the



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number of units expected to be granted as it represents an input in the determination of compensation expense. For the year ended December 31, 2019, the Company estimated that one million Class D Units and 500,765 Class E Units would be granted, as applicable. For the year ended December 31, 2020, the Company estimated that 950,000 Class B-1 Incentive Units, 2,495,240 Class D Units, and 500,765 Class E Units would be granted, as applicable. The Company does not expect to distribute to the Unit holders during the contractual term.

The following assumptions were used to calculate the fair value of our unit awards on the date of grant:

	Years Ended December 31,	
	2019	2020
Estimated volatility	44.0% - 47.0%	47.0% - 102.0%
Expected term (years)	2.75 - 3.25	1.75 - 2.75
Risk-free rate	1.6% - 2.2%	0.1% - 1.6%
Expected dividend yield	0%	0%

Total future compensation cost related to these incentive units is \$13,992 thousand, which is expected to be recognized over a remaining period of four years.

## 18. MEMBERS' EQUITY (DEFICIT) AND REDEEMABLE PREFERRED UNITS

The following summarizes the rights, preferences, and privileges of the Company's Senior Preferred Units, Preferred Units, and Common Units:

**Yield Percentages and Compounding**—The Company's Senior Preferred Units compound semi-annually at a per annum yield rate of 12.5%.

**Liquidation Preference**—Senior Preferred Units rank in highest priority for liquidation relative to other units. The Senior Preferred Units hold first and second priority liquidation preference: first for an amount equal to the sum of the amount of the aggregate unpaid yield and aggregate unreturned capital, and second for payment of any reasonable out-of-pocket expenses associated with certain agreements. The Preferred Units have a liquidation preference subsequent to the Senior Preferred Units, but before the Common Units, for an amount equal to the aggregate unreturned capital. The Common Units rank lowest in liquidation priority.

**Dividends**—Unit holders are entitled to distributions when declared by our parent, Hoya Topco, LLC. Distributions are made first to the holders of the Senior Preferred Units in an amount equal to the aggregate unpaid yield and aggregate unreturned capital. The yield on the Senior Preferred Units increases by 100 basis points upon the seventh, eighth, and ninth anniversaries from the date of issuance, which was June 30, 2017. Distributions to Preferred Units are after Senior Preferred Units but before Common Units, in an amount equal to the aggregate unreturned capital. After all Senior Preferred and Preferred Units distributions have been made, any remaining available amount would be distributed to the Common Units. There is no stated yield on the Preferred Units and the Preferred Units do not participate in any residual earnings of the Company.

As of December 31, 2020, no distributions toward unpaid yield or unreturned capital have been made.

**Conversion Rights**—The holders of the Senior Preferred and Preferred Units do not possess conversion rights.

**Voting Rights**—The holders of the Senior Preferred Units and Preferred Units do not possess voting rights.

**Redemption Rights**—The holders of the Class A Preferred Units at the Hoya Topco, LLC level have the right to require Hoya Topco, LLC to repurchase or redeem the then outstanding Class A Preferred Units upon the acceleration of debt, upon the sale of the Company, or upon an initial public offering. Such redemption would also cause the Senior Preferred Units of the Company to be redeemed based on the payout structure of these

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units. Additionally, Hoya Topco, LLC holds the Senior Preferred Units and has a call right on the Class A Preferred Units of Hoya Topco, LLC. The Senior Preferred Units would be redeemed based on their payout structure if the call right is exercised.

The redemption price equals (i) the liquidation preference as described above plus (ii) a premium. The premium is 4.0% if the redemption occurs between July 1, 2019 and June 30, 2020 or 2.0% if the redemption occurs between July 1, 2020 and June 30, 2021. There is no redemption premium for redemptions occurring after June 30, 2021. The holders of the Preferred Units also possess a redemption right and may redeem their units for an amount equal to their liquidation preference as described above. The Company classifies its Senior Preferred and Preferred Units as temporary equity, or outside of Member's equity/(deficit), because the redemption rights are not solely within the Company's and our parent's control.

As of December 31, 2020, the Senior Preferred Units and Preferred Units were deemed to be currently redeemable and are measured at the maximum redemption amount, with the offset recorded to Additional paid-in capital on the Consolidated Balance Sheets. Therefore, the Senior Preferred Units were accreted to an amount equal to their liquidation preference plus the applicable premium, and the Preferred Units are carried at an amount equal to their unreturned capital.

### 19. NET LOSS PER UNIT

The following table sets forth the computation of basic and diluted net loss per unit attributable to common unitholders for the periods indicated (in thousands, except per unit amounts):

	Year ended December 31,	
	2019	2020
Net loss	\$ (53,848)	\$ (774,185)
Accretion of senior preferred units	14,399	21,134
Net loss attributable to common unitholders	<b>\$ (68,247)</b>	<b>\$ (795,319)</b>
Weighted-average common units, basic and diluted	100	100
Net loss per unit attributable to common unitholders, basic and diluted	<b><u><u>\$(682,472)</u></u></b>	<b><u><u>\$(7,953,192)</u></u></b>

The Company has no dilutive common equivalent units. Accordingly, for the periods presented, diluted net loss per unit is equal to basic net loss per unit.

### 20. SUBSEQUENT EVENTS

The Company evaluated subsequent events for recognition or disclosure through May 27, 2021.

On April 21, 2021, the Company and Hoya Topco, LLC, our parent, entered into a definitive transaction agreement with Horizon Acquisition Corporation ("Horizon"), a publicly traded special purpose acquisition company, and Horizon Sponsor, LLC, a Delaware limited liability company, to effect a merger of the Company and Horizon. The merger transaction is expected to close during the second half of 2021.

The merger will be effectuated in the following principal steps:

- Horizon will merge with and into Vivid Seats Inc., a Delaware corporation formed by the Company to facilitate the merger, upon which the separate corporate existence of Horizon will cease, and Vivid Seats Inc. will become the surviving corporation.

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- Certain third-party investors, including Horizon Sponsor, LLC, will purchase an aggregate of 22,500,000 shares of Class A common stock of Vivid Seats Inc., par value \$0.0001 per share for an aggregate purchase price of \$225,000 thousand, which is considered a private investment in public equity (“PIPE”). In the event cash proceeds from the merger transaction, which consist of the PIPE financing and the trust account held by Horizon, are less than \$768,984 thousand, certain third-party investors will increase the PIPE financing by an amount equal to the shortfall.
- The shareholders of Hoya Topco, LLC will exchange their interests in the Company for Class B common stock in Vivid Seats Inc., which will be accounted for as a reverse recapitalization.
- Upon closing, the Company, Hoya Topco, LLC, and other designated parties expect to enter into a tax receivable agreement with Vivid Seats Inc. Under the terms of the expected agreement, Vivid Seats Inc. would be expected to pay Hoya Topco, LLC and other designated parties a portion of future income tax savings resulting from existing tax attributes related to the Company.

Total expected cash proceeds from the merger transaction, which consist of marketable securities held in a trust account by Horizon and the PIPE, are \$769,000 thousand. Following the transaction, Hoya Intermediate, LLC shareholders will own a controlling interest in Vivid Seats Inc.

Upon consummation of the transaction, Vivid Seats Inc. will become a publicly traded corporation. The transaction is subject to the approval of the shareholders of Hoya Intermediate, LLC and Horizon.

## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of Vivid Seats Inc.

### **Opinion on the Financial Statement**

We have audited the accompanying balance sheet of Vivid Seats Inc. (the “Company”) as of March 29, 2021 and the related notes (collectively referred to as the “financial statement”). In our opinion, the financial statement presents fairly, in all material respects, the financial position of the Company as of March 29, 2021, in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

This financial statement is the responsibility of the Company’s management. Our responsibility is to express an opinion on this financial statement based on our audit. 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 audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting 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.

Our audit included performing procedures to assess the risks of material misstatement of the financial statement, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statement. We believe that our audit provides a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Chicago, Illinois  
May 27, 2021

We have served as the Company’s auditor since 2021.

**VIVID SEATS INC.**  
**(a wholly owned subsidiary of Hoya Intermediate, LLC)**  
**Balance Sheet as of March 29, 2021**

<b>Assets</b>	
Total Assets	\$—
<b>Liabilities and Stockholder's Equity</b>	
Total Liabilities	\$—
Commitments and contingencies	
Stockholder's equity:	
Common Stock, \$0.01 par value: 1,000 shares authorized; 100 shares issued and outstanding	\$ 10
Due from stockholder	(10)
Total stockholder's equity	—
Total liabilities and stockholder's equity	\$—

**VIVID SEATS INC.**  
**Notes to the Balance Sheet**

**Note 1: Background and Nature of Operations**

Vivid Seats Inc. (“the Company”) was incorporated in Delaware on March 29, 2021 as a wholly owned subsidiary of Hoya Intermediate, LLC (“Hoya Intermediate”). The Company was formed for the purpose of completing the transactions contemplated by the definitive transaction agreement, dated April 21, 2021 (the “Transaction Agreement”), by and among Horizon Acquisition Corporation (“Horizon”), a publicly traded special purpose acquisition company, Horizon Sponsor, LLC, a Delaware limited liability company, Hoya Intermediate, Hoya Topco, LLC (“Hoya Topco”), a Delaware limited liability company, the Company and the other parties thereto. Following the consummation of the transactions contemplated by the Transaction Agreement, the Company will hold approximately 39.4% of the common units of Hoya Intermediate and the Company’s assets will consist of its interest in Hoya Intermediate. However, the consummation of the transactions contemplated by the Transaction Agreement is subject to numerous conditions, and there can be no assurances that such conditions will be satisfied.

**Note 2: Summary of Significant Accounting Policies**

*Basis of Presentation*

The balance sheet is presented in accordance with accounting principles generally accepted in the United States of America (“GAAP”). Separate statements of income and comprehensive income, changes in stockholder’s equity, and cash flows have not been presented because there have been no activities in this entity as of March 29, 2021.

*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires the Company’s management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheet. Actual results could differ from those estimates.

*Organization costs*

Costs related to incorporation of the Company will be paid by Hoya Intermediate and recorded as an expense of Hoya Intermediate.

**Note 3: Stockholder’s Equity**

The Company’s authorized capital stock consists of 1,000 shares of common stock, with a par value of \$0.01 per share. On March 29, 2021, the Company issued 100 shares of common stock to Hoya Intermediate for aggregate consideration of \$10.00.

**Note 4: Subsequent Events**

The Company has evaluated subsequent events through May 27, 2021, the date on which the balance sheet was available for issuance.

On April 21, 2021, Hoya Topco, LLC and Hoya Intermediate, our parent, entered into a definitive transaction agreement with Horizon Acquisition Corporation (“Horizon”), a publicly traded special purpose acquisition company, and Horizon Sponsor, LLC, a Delaware limited liability company, to effect a merger of the Company and Horizon. The merger transaction is expected to close during the second half of 2021.

The merger will be effectuated in the following principal steps:

- Horizon will merge with and into the Company to facilitate the merger, upon which the separate corporate existence of Horizon will cease, and the Company will become the surviving corporation.
- Certain third-party investors, including Horizon Sponsor, LLC, will purchase an aggregate of 22,500,000 shares of Class A common stock of the Company, par value \$0.0001 per share for an aggregate purchase price of \$225,000 thousand, which is considered a private investment in public equity (“PIPE”). In the event cash proceeds from the merger transaction, which consist of the PIPE financing and the trust account held by Horizon, are less than \$768,984 thousand, certain third-party investors will increase the PIPE financing by an amount equal to the shortfall.
- The shareholders of Hoya Topco will exchange their interests in Hoya Intermediate for Class B common stock in the Company, which will be accounted for as a reverse recapitalization.
- Upon closing, Hoya Topco, LLC, Hoya Intermediate, and other designated parties expect to enter into a tax receivable agreement with the Company. Under the terms of the expected agreement, the Company would be expected to pay Hoya Topco, LLC and other designated parties a portion of future income tax savings resulting from existing tax attributes related to Hoya Intermediate.

Total expected cash proceeds from the merger transaction, which consist of marketable securities held in a trust account by Horizon and the PIPE, are \$769,000 thousand. Following the transaction, Hoya Intermediate shareholders will own a controlling interest in the Company.

Upon consummation of the transaction, the Company will become a publicly traded corporation. The transaction is subject to the approval of the shareholders of Hoya Intermediate and Horizon.

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**TRANSACTION AGREEMENT**

**by and among**

**HORIZON ACQUISITION CORPORATION,**

**HORIZON SPONSOR, LLC,**

**HOYA TOPCO, LLC,**

**HOYA INTERMEDIATE, LLC**

**AND**

**VIVID SEATS INC.**

**dated as of April 21, 2021**

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## **TRANSACTION AGREEMENT**

This Transaction Agreement, dated as of April 21, 2021 (this “Agreement”), is made and entered into by and among Horizon Acquisition Corporation, a Cayman Islands exempted company (“Horizon”), Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”, and together with Horizon, the “Horizon Entities”), Hoya Topco, LLC, a Delaware limited liability company (“Topco”), Hoya Intermediate, LLC, a Delaware limited liability company (“Intermediate”), and Vivid Seats Inc., a Delaware corporation and a direct wholly owned subsidiary of Intermediate (“VS PubCo” and collectively with Topco and Intermediate, the “VS Entities”).

### **RECITALS**

**WHEREAS**, Horizon is a blank check company formed for the purpose of effecting a merger, share exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses;

**WHEREAS**, prior to the Merger (as defined below), the VS Entities shall effect the Pre-Closing Restructuring (as defined below);

**WHEREAS**, upon the terms and subject to the conditions of this Agreement, and in accordance with the Delaware General Corporation Law (as amended, the “DGCL”) and the Cayman Islands Companies Act (as amended, the “CICA”), Horizon will merge with and into VS PubCo (the “Merger”), the separate corporate existence of Horizon will cease and VS PubCo will be the surviving corporation of the Merger (hereinafter referred to for the periods at and after the Effective Time (as defined below) as the “Surviving Corporation”);

**WHEREAS**, for U.S. federal (and applicable state and local) income Tax purposes, it is intended that (i) the Merger qualifies as a “reorganization” within the meaning of Section 368(a)(1)(F) of the Code and (ii) this Agreement constitutes a “plan of reorganization,” with respect to the Merger, within the meaning of Section 368 of the Code and Treasury Regulations Sections 1.368-2(g) and 1.368-3(a);

**WHEREAS**, on the date hereof, Sponsor and Horizon will enter into that certain exchange agreement (the “Exchange Agreement”) whereby, effective at least one day prior to, and conditioned upon, the consummation of the Merger, Sponsor shall irrevocably tender to Horizon 13,599,608 shares of Horizon Class B Common Stock for cancellation in exchange for (i) warrants to purchase 17,000,000 shares of Horizon Class A Common Stock at an exercise price of \$10.00 per share (the “Horizon \$10.00 Exercise Warrants”), (ii) warrants to purchase 17,000,000 shares of Horizon Class A Common Stock at an exercise of \$15.00 per share (the “Horizon \$15.00 Exercise Warrants”) and (iii) 50,000 shares of Horizon Class A Common Stock, as more particularly set forth therein (collectively, the “Sponsor Exchange”);

**WHEREAS**, upon the Effective Time, each share of Horizon Common Stock (as defined below) will be converted into one share of Class A Common Stock of the Surviving Corporation, par value \$0.0001 per share (“Class A Common Stock”), as set forth in this Agreement, and each Horizon Warrant that is issued and outstanding immediately prior to the Effective Time will become a Surviving Corporation Common Warrant exercisable for Class A Common Stock in accordance with the terms of the applicable Warrant Agreement;

**WHEREAS**, on the date hereof, the PIPE Investors (as defined below) have agreed to purchase shares of Class A Common Stock at a price per share equal to \$10.00 at the Closing immediately following the Effective Time, in each case, pursuant to subscription agreements (“PIPE Subscriptions”) substantially in the form attached hereto as Exhibit E (the “PIPE Subscription Agreements”);

**WHEREAS**, Sponsor has delivered to the VS Entities a duly executed Sponsor Support Agreement (as defined below) as of the date hereof;

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**WHEREAS**, at the Closing, the Amended and Restated Limited Liability Agreement of Intermediate, dated as of June 30, 2017, as amended by that First Amendment, dated as of January 25, 2018 (the “Current LLCA”) shall be amended and restated substantially in the form attached hereto as Exhibit F (the “Second A&R LLCA”);

**WHEREAS**, at the Closing and immediately following the effectiveness of the Second A&R LLCA, pursuant to the Crescent Purchase Agreement, VS PubCo will purchase all of the issued and outstanding capital stock of each of CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7B VS Equity, LLC and CM7C VS Equity, LLC (collectively, the “Crescent Blockers”, and the outstanding capital stock of the Crescent Blockers, the “Crescent Blocker Shares”) from the Blocker Sellers (as defined below) in exchange for the Blocker Purchase Price (as defined below) (the “Blocker Purchase”);

**WHEREAS**, at the Closing and immediately following the effectiveness of the Second A&R LLCA and the Blocker Purchase, Intermediate will issue to VS PubCo (i) the VS PubCo Matching Intermediate Common Units (as defined below) and (ii) the VS PubCo Matching Intermediate Warrants (as defined below) (clauses (i) and (ii) together, the “Intermediate Contribution and Issuance”), in each case in exchange for the Intermediate Contribution Amount (as defined below);

**WHEREAS**, at the Closing and immediately following the effectiveness of the Second A&R LLCA, the Blocker Purchase and the Intermediate Contribution and Issuance, pursuant to the Crescent Purchase Agreement, Intermediate will redeem 100% of the Intermediate Common Units held by the Redeemed Crescent Parties (as defined below) in exchange for the Redemption Price (as defined below) (the “Crescent Redemption”);

**WHEREAS**, at the Closing and immediately following the effectiveness of the Second A&R LLCA, the Surviving Corporation shall issue shares of Class B Common Stock of the Surviving Corporation, par value \$0.0001 per share (“Class B Common Stock”), to Topco as set forth herein; and

**WHEREAS**, each of the Board of Directors of Horizon and the Board of Directors of VS PubCo has (i) determined that it is advisable for and in the best interests of such party and its stockholder(s) to enter into this Agreement and the Transactions (as defined below), (ii) approved the execution and delivery of this Agreement and the documents contemplated hereby and the Transactions, (iii) with respect to the Board of Directors of Horizon determined that it is advisable for and in the best interests of Horizon to approve and enter into the Plan of Merger and recommended the approval of the Transaction Proposals by the Horizon Stockholders and (iv) with respect to the Board of Directors of VS PubCo, recommended the approval of the Merger by Intermediate.

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, the Horizon Entities and the VS Entities agree as follows:

## **ARTICLE I**

### **CERTAIN DEFINITIONS**

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

“2020 Warrant Agreement” means the Warrant Agreement, dated as of August 25, 2020, between Horizon and the Warrant Agent.

“Acquisition Proposal” means, as to any Person, other than the Transactions and other than the acquisition or disposition of equipment or other tangible personal property in the ordinary course of business, any offer or proposal relating to: (a) any acquisition or purchase, direct or indirect, of (i) 15% or more of the consolidated

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assets of such Person and its Subsidiaries or (ii) 15% or more of any class of equity or voting securities of (x) such Person or (y) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; (b) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in any Person beneficially owning 15% or more of any class of equity or voting securities of (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries; or (c) a merger, consolidation, share exchange, business combination, sale of substantially all the assets, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving (i) such Person or (ii) one or more Subsidiaries of such Person holding assets constituting, individually or in the aggregate, 15% or more of the consolidated assets of such Person and its Subsidiaries.

“[Action](#)” means any claim, action, suit, charge, audit, examination, assessment, arbitration, mediation or inquiry, or any proceeding or investigation, by or before any Governmental Authority.

“[Affiliate](#)” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, whether through one or more intermediaries or otherwise. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

“[Agreement](#)” has the meaning specified in the Preamble.

“[Agreement End Date](#)” has the meaning specified in [Section 9.1\(e\)](#).

“[Ancillary Agreements](#)” has the meaning specified in [Section 10.10](#).

“[Anti-Bribery Laws](#)” means the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, and any rules or regulations promulgated thereunder or other Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Officials).

“[Antitrust Laws](#)” means the United States Sherman Antitrust Act of 1890, the United States Clayton Act of 1914, the HSR Act, the United States Federal Trade Commission Act of 1914, and all other domestic and foreign Laws, including foreign merger control and other competition Laws, issued by a Governmental Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“[Applicable Tax Position](#)” has the meaning specified in [Section 7.3\(a\)\(iv\)](#).

“[Available Horizon Cash](#)” has the meaning specified in [Section 6.1\(a\)](#).

“[Blocker Purchase](#)” has the meaning specified in the Recitals.

“[Blocker Purchase Price](#)” has the meaning set forth in the Crescent Purchase Agreement.

“[Blocker Sellers](#)” has the meaning set forth in the Crescent Purchase Agreement.

“[Business Combination](#)” has the meaning set forth in the Horizon Governing Documents as in effect on the date hereof.

“[Business Combination Proposal](#)” means any offer, inquiry, proposal or indication of interest (whether written or oral, binding or non-binding, and other than an offer, inquiry, proposal or indication of interest with respect to the Transactions), relating to a Business Combination.

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“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Law to close.

“CARES Act” means (i) the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) and any administrative or other guidance published with respect thereto by any Governmental Authority (including IRS Notices 2020-22 and 2020-65), or any other Law or executive order or executive memorandum (including the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020) intended to address the consequences of COVID-19 (in each case, including any comparable provisions of state, local or non-U.S. Law and including any related or similar orders or declarations from any Governmental Authority) and (ii) any extension of, amendment, supplement, correction, revision or similar treatment to any provision of the CARES Act, the Families First Coronavirus Response Act of 2020 (H.R. 6201), and “Division N - Additional Coronavirus Response and Relief” of the Consolidated Appropriations Act, 2021 (H.E. 133) contained in the Consolidated Appropriations Act, 2021, H.R. 133.

“CBA” has the meaning specified in Section 3.12(a)(i).

“CICA” has the meaning set forth in the Recitals.

“Class A Common Stock” has the meaning specified in the Recitals.

“Class B Common Stock” has the meaning specified in the Recitals.

“Class B Issuance” has the meaning specified in Section 2.8.

“Closing” has the meaning specified in Section 2.9.

“Closing Date” has the meaning specified in Section 2.9.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Stock Conversion” has the meaning specified in Section 2.2(a).

“Company Benefit Plan” has the meaning specified in Section 3.13(a).

“Company Cure Period” has the meaning specified in Section 9.1(e).

“Company Indemnified Parties” has the meaning specified in Section 5.8(a).

“Company Intellectual Property” means, collectively, the Owned Intellectual Property and the Licensed Intellectual Property.

“Company Material Adverse Effect” means any event, series of events, condition, state of facts, development, change, circumstance, occurrence or effect (collectively, “Events”) that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, results of operations or financial condition of Topco and its Subsidiaries, taken as a whole or (ii) the ability of the VS Entities to consummate the Transactions; provided, however, that in no event would any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has been or will be, a “Company Material Adverse Effect”: (a) any change in applicable Laws or GAAP or any interpretation thereof following the date of this Agreement, (b) any change in interest rates or economic, political, business or financial market conditions generally, (c) the taking of any action expressly required by or, with respect to Sections 7.1, 7.2 or 7.4, permitted to be taken under this Agreement, (d) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences),



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pandemic (including COVID-19, or any COVID-19 Measures or any change in such COVID-19 Measures or interpretations following the date of this Agreement), acts of nature or change in climate, or any declaration of a national emergency by any Governmental Authority, (e) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, or social conditions, (f) any failure in and of itself of the VS Companies to meet any projections or forecasts, provided that the exception in this clause (f) shall not prevent or otherwise affect a determination that any change, effect or development underlying such change has resulted in or contributed to a Company Material Adverse Effect, (g) any Events generally applicable to the industries or markets in which the VS Companies operate, (h) any action taken by, or at the request of, or with the express consent of Horizon; provided, that in the case of each of clauses (a), (b), (d), (e) and (g), any such Event to the extent it disproportionately affects the VS Companies relative to other participants in the industries in which such Persons operate shall not be excluded from the determination of whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect.

“Company Registered Intellectual Property” has the meaning specified in Section 3.18(a).

“Confidentiality Agreement” has the meaning specified in Section 10.10.

“Constituent Corporations” has the meaning specified in Section 2.1(a).

“Contracts” means any contracts, agreements, subcontracts, leases, commitments, undertakings and purchase orders, whether written or oral.

“COVID-19” means the novel coronavirus, SARS-CoV-2 or COVID-19 (and all related strains and sequences), including any resurgence or any evolutions or mutations thereof, and/or related or associated epidemics, pandemics, disease outbreaks or public health emergencies.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive, guidelines or recommendations promulgated by any industry group or any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the CARES Act and Families First Act.

“COVID-19 Tax Measure” means any legislation or order enacted or issued by any Relevant Authority with respect to any Tax matter in response to COVID-19 (including, without limitation, the CARES Act and the Memorandum for the Secretary of the Treasury signed by President Trump on August 8, 2020)) and any administrative authority issued pursuant to such legislation or order or otherwise issued with respect to any Tax matter in response to COVID-19 (including, without limitation, IRS Notice 2020-65).

“Crescent Blocker Shares” has the meaning specified in the Recitals.

“Crescent Blockers” has the meaning specified in the Recitals.

“Crescent Redemption” has the meaning specified in the Recitals.

“Crescent Purchase Agreement” means that certain purchase, sale and redemption agreement, dated as of the date hereof, among VS PubCo, Intermediate, Topco, the Blocker Sellers, the Redeemed Crescent Parties and the other parties thereto to effect, among others, the Crescent Redemption and the Blocker Purchase, as amended or modified from time to time.

“Current LLCA” has the meaning specified in the Recitals.

“D&O Indemnified Parties” has the meaning specified in Section 5.8(a).

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“Data Room” means the virtual data room titled “Project Sports” hosted by Donnelly Financial Solutions at [https://wwwna2.dfsvenue.com/p/2021002721/\\_layouts/v01/rrdsunprogs/documentlibrary.aspx#/docLib](https://wwwna2.dfsvenue.com/p/2021002721/_layouts/v01/rrdsunprogs/documentlibrary.aspx#/docLib)

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“DGCL” has the meaning specified in the Recitals.

“Disclosure Letter” means, as applicable, the VS Disclosure Letter or the Horizon Disclosure Letter.

“Dividend Window” has the meaning specified in [Section 2.6](#).

“Dollars” or “\$” means lawful money of the United States.

“Effective Time” has the meaning specified in [Section 2.1\(f\)](#).

“Environmental Laws” means any and all Laws relating to the protection of the environment or natural resources, pollution or worker health or safety, including as it relates to Hazardous Materials exposure.

“ERISA” has the meaning specified in [Section 3.13\(a\)](#).

“ERISA Affiliate” means any corporation or trade or business, whether or not incorporated, that together with any of the VS Companies company would, at any relevant time, be deemed to be a single employer pursuant to Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

“ESPP” has the meaning specified in [Section 7.5](#).

“Event” has the meaning specified in the definition of Company Material Adverse Effect.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Agent” has the meaning specified in [Section 2.2\(d\)\(i\)](#).

“Exchange Agreement” has the meaning specified in the Recitals.

“Financial Statements” has the meaning specified in [Section 3.8\(a\)](#).

“Flow-Thru Tax Returns” means income Tax Returns of the VS Companies in respect of any Pre-Closing Tax Period for which the items of income, deductions, credits, gains or losses are passed through to the direct or indirect equityholders of the applicable VS Company under applicable Law (including, for the avoidance of doubt, any Form 1065 of any VS Company).

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Governing Documents” means the legal agreements and instruments by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation are its certificate of incorporation and by-laws, the “Governing Documents” of a limited partnership are its limited partnership agreement and certificate of limited partnership, the “Governing Documents” of a limited liability company are its operating agreement and certificate of formation and the “Governing Documents” of an exempted company are its memorandum and articles of association.

“Governmental Authority” means any federal, national, state, provincial or municipal government, or any political subdivision thereof, and any agency, commission, department, board, bureau, official, minister, arbitral

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body (public or private), tribunal or court, whether national, state, provincial, local, foreign or multinational, exercising executive, legislative, judicial, regulatory or administrative functions of a nation, state, province or municipal government, or any political subdivision thereof, including any authority having governmental or quasi-governmental powers, domestic or foreign.

“Governmental Authorization” has the meaning specified in Section 3.5.

“Governmental Order” means any order, judgment, injunction, decision, decree, writ, stipulation, determination, directive or award, in each case, entered or issued by or with any Governmental Authority.

“Governmental Permit” means any consent, franchise, approval, registration, variance, license, permit, grant, certificate, registration or other authorization or approval of a Governmental Authority or pursuant to any Law.

“Hazardous Materials” means any material, substance, chemical, contaminant, pollutant or waste for which liability or standards of conduct may be imposed, or that is listed, classified or regulated pursuant to Environmental Laws, including petroleum or petroleum products, asbestos or asbestos-containing materials, mold, lead, radioactive materials, polychlorinated biphenyls, or per- or polyfluoroalkyl substances.

“Horizon” has the meaning specified in the Preamble.

“Horizon \$10.00 Exercise Warrants” has the meaning specified in the Recitals.

“Horizon \$15.00 Exercise Warrants” has the meaning specified in the Recitals.

“Horizon Class A Common Stock” means Class A ordinary shares of Horizon, par value \$0.0001 per share.

“Horizon Class B Common Stock” means Class B ordinary shares of Horizon, par value \$0.0001 per share.

“Horizon Common Stock” means the Horizon Class A Common Stock and Horizon Class B Common Stock.

“Horizon Common Warrants” means the redeemable public warrants of Horizon which were issued and sold as part of Horizon’s initial public offering.

“Horizon Cure Period” has the meaning specified in Section 9.1(f).

“Horizon Disclosure Letter” has the meaning specified in the introduction to Article IV.

“Horizon Entities” has the meaning specified in the Preamble.

“Horizon Financial Statements” has the meaning specified in Section 4.6(d).

“Horizon Governing Documents” means the amended and restated memorandum and articles of association of Horizon.

“Horizon Indemnified Parties” has the meaning specified in Section 5.8(a).

“Horizon Material Adverse Effect” means any Event that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (i) the business, results of operations or financial condition of the Horizon Entities, taken as a whole or (ii) the ability of the Horizon Entities to consummate the Transactions; provided, however, that in no event would any of the following, alone or in combination, be

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deemed to constitute, or be taken into account in determining whether there has been or will be, a “Horizon Material Adverse Effect”: (a) any change in applicable Laws or GAAP or any interpretation thereof following the date of this Agreement, (b) any change in interest rates or economic, political, business or financial market conditions generally, (c) the taking of any action expressly required to be taken under this Agreement, (d) any natural disaster (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences), pandemic (including COVID-19, or any COVID-19 Measures or any change in such COVID-19 Measures or interpretations following the date of this Agreement), acts of nature or change in climate, or any declaration of a national emergency by any Governmental Authority, (e) any acts of terrorism or war, the outbreak or escalation of hostilities, geopolitical conditions, local, national or international political conditions, or social conditions, (f) the consummation and effects of any Horizon Share Redemptions, (g) any Events generally applicable to the industries or markets in which the Horizon Entities operate, (h) any action taken by, or at the request of, or with the express consent of the VS Entities; provided, that in the case of each of clauses (a), (b), (d), (e) and (g), any such Event to the extent it disproportionately affects the Horizon Entities relative to other participants in the industries in which such Persons operate shall not be excluded from the determination of whether there has been, or would reasonably be expected to be, a Horizon Material Adverse Effect. Notwithstanding the foregoing, with respect to Horizon, the amount of the Horizon Share Redemptions or the failure to obtain the Horizon Stockholder Approval shall not be deemed to be a Horizon Material Adverse Effect.

“Horizon Non-Recourse Parties” has the meaning specified in Section 10.16(b).

“Horizon Private Placement Warrants” means the redeemable private placement warrants of Horizon which were issued and sold to Sponsor or its Affiliates as part of Horizon’s private placement units.

“Horizon SEC Filings” has the meaning specified in Section 4.10.

“Horizon Securities” has the meaning specified in Section 4.5(a).

“Horizon Share Redemption” means the election of an eligible (as determined in accordance with the Horizon Governing Documents) holder of shares of Horizon Common Stock to have Horizon repurchase the shares of Horizon Common Stock held by such holder at a per-share price, payable in cash, equal to a pro rata share of the aggregate amount on deposit in the Trust Account (including any interest earned on the funds held in the Trust Account, but net of Taxes payable) (as determined in accordance with the Horizon Governing Documents) in connection with the Transaction Proposals.

“Horizon Share Redemption Amount” means the aggregate amount payable from the Trust Account with respect to all Horizon Share Redemptions.

“Horizon Stockholder Approval” means the approval of those Transaction Proposals identified in clauses (A)-(G) of Section 7.2(b), (i) in the case of clause (A) thereof, by an affirmative vote of the holders of at least two-thirds of the outstanding Horizon Common Stock entitled to vote, who attend and vote thereupon (as determined in accordance with applicable Law and the Horizon Governing Documents) at a Horizon Stockholders’ Meeting duly called by the Board of Directors of Horizon and held for such purpose, and (ii) in the case of clauses (B) to (G) thereof, by an affirmative vote of the holders of at least a majority of the outstanding shares of Horizon Common Stock entitled to vote, who attend and vote thereupon (as determined in accordance with applicable Law and the Horizon Governing Documents) at a Horizon Stockholders’ Meeting duly called by the Board of Directors of Horizon and held for such purpose.

“Horizon Stockholders” means the stockholders of Horizon as of immediately prior to the Closing.

“Horizon Stockholders’ Meeting” has the meaning specified in Section 7.2(b).

“Horizon Tax Position” has the meaning specified in Section 7.3(a)(iv).

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“[Horizon Transaction Expenses](#)” means any out-of-pocket fees and expenses paid or payable by Horizon or any of its Subsidiaries or any of their respective Affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the Transactions, including (A) all fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers, and (B) any and all filing fees payable by Horizon or any of its Subsidiaries to the Governmental Authorities in connection with the Transactions.

“[Horizon Warrants](#)” means the Horizon Common Warrants, the Horizon Private Placement Warrants, the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants.

“[HSR Act](#)” has the meaning specified in [Section 3.5](#).

“[Incentive Equity Plan](#)” has the meaning specified in [Section 7.5](#).

“[Incentive Units](#)” has the meaning specified in [Section 3.7\(a\)](#).

“[Indebtedness](#)” means, with respect to any Person, (a) all indebtedness for borrowed money, including accrued interest, (b) capitalized lease obligations under GAAP, (c) letters of credit, bank guarantees, bankers’ acceptances and other similar instruments, (d) obligations evidenced by bonds, debentures, notes and similar instruments, (e) interest rate protection agreements and currency obligation swaps, hedges or similar arrangements, (f) all obligations to pay the deferred and unpaid purchase price of property, goods, services and equipment which have been delivered, including “earn outs” and “seller notes” and (g) all breakage costs, prepayment or early termination premiums, penalties, or other fees or expenses payable as a result of the Transactions in respect of any of the items in the foregoing clauses (a) through (f), and (h) all Indebtedness of another Person referred to in clauses (a) through (g) above guaranteed directly or indirectly, jointly or severally, by such Person.

“[Intellectual Property](#)” means: (i) patents, patent applications and continuations, continuations-in-part, extensions, divisions, reissues, reexaminations thereof, and patent disclosures, industrial designs, and other intellectual property rights in inventions (whether or not patentable or reduced to practice); (ii) trademarks, service marks, trade dress, trade names, logos, internet domain names, social media handles, and other indicia of source of origin, together with the goodwill associated with any of the foregoing; (iii) intellectual property rights in works of authorship, data and databases, as well as copyrights and mask works; (iv) intellectual property rights in or to software and other technology (including source code and object code); (v) trade secrets and other intellectual property rights in Proprietary Information; (vi) registrations, issuances, and applications for any of the foregoing; and (vii) all other intellectual property rights in any jurisdiction throughout the world.

“[Interim Period](#)” has the meaning specified in [Section 5.1](#).

“[Intermediate](#)” has the meaning specified in the Preamble.

“[Intermediate Common Units](#)” means the common units of Intermediate issued in connection with the Pre-Closing Restructuring and the Intermediate Contribution and Issuance.

“[Intermediate Contribution Amount](#)” means an amount equal to (i) the Surviving Corporation Available Cash *minus* (ii) the Blocker Purchase Price *minus* (iii) the Tax Liability Amount (as defined in the Crescent Purchase Agreement) *plus* (iv) the right to receive the Potential Payment (to the extent not paid to the Horizon stockholders prior to the Closing pursuant to [Section 2.6](#)).

“[Intermediate Contribution and Issuance](#)” has the meaning set forth in the Recitals.

“[Intermediate Warrants](#)” has the meaning set forth in [Section 2.1\(a\)](#).

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“Intervening Event” has the meaning specified in Section 7.2(c).

“Intervening Event Change in Recommendation” has the meaning specified in Section 7.2(c).

“Intervening Event Notice Period” has the meaning specified in Section 7.2(c).

“Investment Company Act” means the Investment Company Act of 1940, as amended.

“IRS” means the Internal Revenue Service.

“IT Systems” means computers, software, hardware, servers, workstations, routers, hubs, switches, data communications lines, firmware, networks and all other information technology equipment owned, leased or licensed by the VS Companies and used in their business.

“JOBS Act” has the meaning specified in Section 4.6(a).

“Law” means any statute, law, ordinance, rule, regulation, code or Governmental Order, in each case, of any Governmental Authority.

“Leased Real Property” means all real property leased, licensed, subleased or otherwise used or occupied by any of the VS Companies.

“Legal Proceedings” has the meaning specified in Section 3.10.

“Licensed Intellectual Property” means Intellectual Property that any of the VS Companies license from a third party.

“Lien” means all liens, judgments, charges, easements, servitudes, mortgages, deeds of trust, pledges, hypothecations, encumbrances, security interests, options, licenses, leases, subleases, restrictions, title retention devices (including the interest of a seller or lessor under any conditional sale agreement or capital lease, or any financing lease having substantially the same economic effect as any of the foregoing), collateral assignments, claims or other encumbrances of any kind whether consensual, statutory or otherwise, and whether filed, recorded or perfected under applicable Law (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset, but in any event excluding restrictions under applicable securities Laws).

“made available” means that documents were posted in the Data Room at or prior to 5:00 p.m., New York time, on the date that is one (1) day prior to the date of this Agreement and were not removed from the Data Room.

“Merger” has the meaning specified in the Recitals.

“Merger Certificate” has the meaning specified in Section 2.1(f).

“Minimum Available Horizon Cash Amount” has the meaning specified in Section 6.1(a).

“Modification in Recommendation” has the meaning specified in Section 7.2(b).

“Multiemployer Plan” has the meaning specified in Section 3.13(c).

“Non-US Company Benefit Plan” has the meaning specified in Section 3.13(b).

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“NYSE” has the meaning specified in Section 3.5.

“OFAC” means the U.S. Office of Foreign Assets Control.

“Open Source Software” means any software that is distributed as “free software,” “open source software,” “shareware” or under a similar licensing or distribution model, including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), or any other license for software that meets the “Open Source Definition” promulgated by the Open Source Initiative.

“Owned Intellectual Property” means all Intellectual Property owned or purported to be owned by the VS Companies.

“Partnership Tax Audit Rules” means Sections 6221 through 6241 of the Code, together with any guidance issued thereunder or successor provisions and any similar provision of state or local Tax Laws.

“Permitted Liens” means (i) mechanic’s, materialmen’s and similar Liens arising in the ordinary course of business with respect to any amounts (A) not yet due and payable or which are being contested in good faith through (if then appropriate) appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (ii) Liens for Taxes (A) not yet due and payable or which are being contested in good faith through appropriate proceedings and (B) for which adequate accruals or reserves have been established in accordance with GAAP, (iii) defects or imperfections of title, easements, encroachments, covenants, rights-of-way, conditions, restrictions and other similar charges or encumbrances that do not materially interfere with the present use of the Leased Real Property, (iv) with respect to any Leased Real Property (A) the interests and rights of the respective lessors with respect thereto, including any statutory landlord liens and any Lien thereon, (B) any Lien permitted under the Real Property Lease, and (C) any Liens encumbering the real property of which the Leased Real Property is a part, (v) zoning, building, entitlement and other land use and environmental regulations promulgated by any Governmental Authority that do not materially interfere with the current use of the Leased Real Property, (vi) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business consistent with past practice, (vii) ordinary course purchase money Liens and Liens securing rental payments under operating or capital lease arrangements for amounts not yet due or payable, (viii) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money and on a basis consistent with past practice in connection with workers’ compensation, unemployment insurance or other types of social security and (ix) all other Liens that would not, individually or in the aggregate, materially impair the use, occupancy or value of the applicable assets of the VS Companies.

“Person” means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, bank, trust company, trust or other entity, whether or not a legal entity, Governmental Authority or any department, agency or political subdivision thereof.

“Personal Data” means any information which identifies or could reasonable be used to identify, whether alone or in combination with other information, a natural Person, or other information that constitutes “personal information” or “personal data” under applicable Privacy Laws.

“PIPE Investors” means each of the Persons (other than Horizon) that is party to a PIPE Subscription Agreement.

“PIPE Subscription Agreements” has the meaning specified in the Recitals.

“PIPE Subscriptions” has the meaning specified in the Recitals.

“Plan of Merger” has the meaning specified in Section 2.1(f).

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“Potential Payment” means the potential payment set forth on Section 1.1 of the Horizon Disclosure Letter.

“Pre-Closing Flow-Thru Tax Return” has the meaning specified in Section 7.3(a)(i).

“Pre-Closing Restructuring” means the restructuring transactions set forth in the Pre-Closing Restructuring Plan; provided that the VS Entities may make amendments to the Pre-Closing Restructuring Plan after the date hereof with the prior written consent of Horizon (not to be unreasonably conditioned, withheld or delayed).

“Pre-Closing Restructuring Plan” means the restructuring transactions set forth in Section 1.1(a) of the VS Disclosure Letter.

“Pre-Closing Tax Period” means any taxable period (or portion thereof) ending on or before the Closing Date, including the portion of any Straddle Period ending on (and including) the Closing Date.

“Privacy Agreements” means all data and privacy related policies (e.g., Privacy and Data Security Policies, acceptable use policies, terms of service, etc.) and other Contracts to which any VS Company is a party whereby such VS Company makes commitments to a third party regarding the processing of Personal Data.

“Privacy Laws” means all Laws concerning or otherwise applicable to data security, data privacy, cyber security and e-commerce, including Federal Trade Commission Act; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; the Children’s Online Privacy Protection Act; the California Consumer Privacy Act of 2018; the Computer Fraud and Abuse Act; the Electronic Communications Privacy Act; the Family Educational Rights and Privacy Act; and all other similar international, federal, state, provincial, and local Laws, and in each case, the rules implemented thereunder.

“Proprietary Information” means all trade secrets and all other confidential or proprietary information, including confidential or proprietary know-how, inventions, methodologies, processes, techniques, research and development information, specifications, algorithms, financial, technical, marketing and business data, sales, pricing and cost information, customer information and supplier lists.

“Prospectus” has the meaning specified in Section 10.1.

“Proxy Statement” has the meaning specified in Section 7.2(a)(i).

“Proxy Statement/Registration Statement” has the meaning specified in Section 7.2(a)(i).

“Q1 Financial Statements” has the meaning specified in Section 5.3(a).

“Q2 Financial Statements” has the meaning specified in Section 5.3(b).

“Q3 Financial Statements” has the meaning specified in Section 5.3(b).

“Real Property Leases” has the meaning specified in Section 3.16(a).

“Redeemed Crescent Parties” has the meaning specified in the Recitals.

“Redemption Price” has the meaning set forth in the Crescent Purchase Agreement.

“Registration Rights Agreement” means that certain Registration Rights Agreement substantially in the form attached hereto as Exhibit C.

“Regulatory Approvals” has the meaning specified in Section 8.1(a).



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“Related Party” means any of the current or former directors, officers, employees, members, or equityholders (or any child or spouse of any such Person) of any VS Company.

“Related Party Transaction” means all agreements or contracts between any VS Company and/or any of their Subsidiaries, on the one hand, and any Related Party, on the other hand, or any payment between or among such parties other than (i) loans and other extensions of credit to officers and employees of the VS Companies and their Subsidiaries for travel, business or relocation expenses or other employment-related purposes made in the ordinary course of business (ii) the Company Benefit Plans and (iii) commercial transactions entered into in the ordinary course of business on arms’ length terms for the use of services provided by the VS Companies.

“Representatives” has the meaning specified in Section 5.6.

“Sanctions” means any sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SEC” means the United States Securities and Exchange Commission.

“Second A&R LLCA” has the meaning specified in the Recitals.

“Securities Act” means the Securities Act of 1933, as amended.

“Solicitation Documents” has the meaning specified in Section 7.2(a)(i).

“Sponsor” has the meaning specified in the Preamble.

“Sponsor Exchange” has the meaning specified in the Recitals.

“Sponsor Support Agreement” means that certain Sponsor Support Agreement, dated as of the date hereof, by and among Sponsor, Horizon and Topco, as amended or modified from time to time.

“Stockholders’ Agreement” means that certain Stockholders’ Agreement by and among Topco, Sponsor and VS PubCo substantially in the form attached hereto as Exhibit I.

“Straddle Period” means any taxable period that includes (but does not end on) the Closing Date.

“Straddle Period Flow-Thru Tax Return” has the meaning specified in Section 7.3(a)(i).

“Subsidiary” means, with respect to a Person, a corporation, general or limited partnership, limited liability company, joint venture, partnership or other entity of which a majority of the economic interests or the voting interests is owned, directly or indirectly, by such Person.

“Surviving Corporation” has the meaning specified in the Recitals.

“Surviving Corporation Available Cash” means the cash and cash equivalents of the Surviving Corporation after giving effect to the PIPE Subscriptions and the Horizon Share Redemptions. For the avoidance of doubt, Surviving Corporation Available Cash excludes cash and cash equivalents of Intermediate and its Subsidiaries.

“Surviving Corporation Bylaws” has the meaning specified in Section 5.9.

“Surviving Corporation Charter” has the meaning specified in Section 5.9.

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“[Surviving Corporation Common Stock](#)” means the Class A Common Stock and the Class B Common Stock.

“[Surviving Corporation Common Warrants](#)” means warrants for Class A Common Stock (which, with respect to the Horizon Common Warrants and the Horizon Private Placement Warrants, shall be in the applicable form set forth in the 2020 Warrant Agreement and, with respect to the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants, shall be in the form set forth in the warrant agreement to be executed between Horizon and the Warrant Agent substantially similar to the relevant form attached to the Exchange Agreement).

“[Surviving Corporation Governing Documents](#)” has the meaning specified in [Section 5.9](#).

“[Tax Receivable Agreement](#)” means that certain Tax Receivable Agreement substantially in the form attached hereto as [Exhibit D](#).

“[Tax Return](#)” means any return, form, election, declaration, report, statement, information statement or other document filed or required to be filed with any Governmental Authority with respect to Taxes, including any claims for refunds of Taxes, any information returns and any amendments or supplements of any of the foregoing.

“[Taxes](#)” means all federal, state, local, foreign or other taxes imposed by any Governmental Authority, including all income (net, gross, or adjusted gross), gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, ad valorem, value added, inventory, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, alternative or add-on minimum, or estimated taxes or other imposts, assessments, fees, levies, customs or import duties, or charges of any kind in the nature of a tax, and including any interest, penalty, or addition thereto.

“[Terminating Company Breach](#)” has the meaning specified in [Section 9.1\(e\)](#).

“[Terminating Horizon Breach](#)” has the meaning specified in [Section 9.1\(f\)](#).

“[Title IV Plan](#)” has the meaning specified in [Section 3.13\(c\)](#).

“[Topco](#)” has the meaning specified in the Preamble.

“[Transaction Proposals](#)” has the meaning specified in [Section 7.2\(b\)](#).

“[Transactions](#)” means, collectively, the Merger, the PIPE Subscriptions, the Crescent Redemption, the Blocker Purchase, the Intermediate Contribution and Issuance, the Class B Issuance, and each of the other transactions contemplated by this Agreement (including, for the avoidance of doubt, the Pre-Closing Restructuring) and the Ancillary Agreements.

“[Transfer Taxes](#)” has the meaning specified in [Section 7.3\(e\)](#).

“[Trust Account](#)” has the meaning specified in [Section 10.1](#).

“[Trust Agreement](#)” has the meaning specified in [Section 4.11](#).

“[Trustee](#)” has the meaning specified in [Section 4.11](#).

“[VS Companies](#)” means Intermediate and all of its Subsidiaries.

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“VS Company Interests” means all of the outstanding equity interests of the VS Companies.

“VS Designated Directors” has the meaning specified in Section 5.7(a).

“VS Disclosure Letter” has the meaning specified in the introduction to Article III.

“VS Entities” has the meaning specified in the Preamble.

“VS Non-Recourse Party” has the meaning specified in Section 10.16(b).

“VS PubCo” has the meaning specified in the Preamble.

“VS PubCo Matching Intermediate Common Units” means a number of Intermediate Common Units equal to the difference between (i) the number of shares of Class A Common Stock issued and outstanding immediately following the Effective Time and the consummation of the PIPE Subscriptions minus (ii) the number of Intermediate Common Units acquired directly or indirectly by VS PubCo as a result of the Blocker Purchase.

“VS PubCo Matching Intermediate Warrants” means warrants to purchase a number of Intermediate Common Units equal to the number of shares of Class A Common Stock that may be purchased upon the exercise in full of all Surviving Corporation Common Warrants outstanding immediately following the Effective Time.

“VS PubCo Tax Position” has the meaning specified in Section 7.3(a)(iv).

“VS Transaction Expenses” means any out-of-pocket fees and expenses paid or payable by the VS Entities or any of their respective Subsidiaries or any of their respective Affiliates (whether or not billed or accrued for) as a result of or in connection with the negotiation, documentation and consummation of the Transactions, including (A) all fees, costs, expenses, brokerage fees, commissions, finders’ fees and disbursements of financial advisors, investment banks, data room administrators, attorneys, accountants and other advisors and service providers, (B) change-in-control payments, transaction bonuses, retention payments, single-trigger severance or similar compensatory payments pursuant to any written arrangements entered into prior to the date of this Agreement, payable by the VS Entities or any of their Subsidiaries to any current or former employee, independent contractor, officer, director or other individual service provider of the VS Entities or any of their Subsidiaries as a direct result of the Transactions (and not tied to any subsequent event or condition, such as a termination of employment and excluding, for the avoidance of doubt, any such payments that arise from actions taken by the Surviving Corporation following the Closing or double-trigger arrangements), including the employer portion of payroll Taxes arising therefrom, (C) any and all filing fees payable by the VS Entities or any of their Subsidiaries or any of their Affiliates to Governmental Authorities in connection with the Transactions and (D) the Backstop Fee (as defined in the Sponsor Support Agreement).

“WARN Act” has the meaning specified in Section 3.14(a).

“Warrant Agent” means Continental Stock Transfer & Trust Company.

“Warrant Agreement” means, with respect to the Horizon Common Warrants and the Horizon Private Placement Warrants, the 2020 Warrant Agreement, and with respect to the Horizon \$10.00 Exercise Warrants and the Horizon \$15.00 Exercise Warrants, the warrant agreement to be executed between Horizon and the Warrant Agent substantially similar to the relevant form attached to the Exchange Agreement.

### Section 1.2 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number,

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respectively; (iii) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the word “including” shall mean “including, without limitation” and (vi) the word “or” shall be disjunctive but not exclusive.

(b) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(d) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(e) Unless the context of this Agreement otherwise requires, references to Horizon with respect to periods following the Effective Time shall be construed to mean the Surviving Corporation.

(f) Except with respect to Article IV or as the context of this Agreement otherwise requires, references to “NYSE” in this Agreement shall refer to the New York Stock Exchange or such other nationally recognized securities exchange mutually agreed by the parties.

Section 1.3 Knowledge. As used herein, (a) the phrase “to the knowledge” of the VS Companies shall mean the knowledge of the individuals identified on Section 1.3 of the VS Disclosure Letter and (b) the phrase “to the knowledge” of Horizon shall mean the knowledge of the individuals identified on Section 1.3 of the Horizon Disclosure Letter, in each case of clauses (a) and (b), as such individuals would have acquired in the exercise of a reasonable inquiry of direct reports.

## **ARTICLE II**

### **TRANSACTIONS; CLOSING**

#### **Section 2.1 Pre-Closing Restructuring; The Merger.**

(a) Prior to the Closing, the VS Entities shall, or shall cause their Subsidiaries to, take all such actions as are necessary so that the Pre-Closing Restructuring shall be consummated prior to the Closing. Pursuant to the Pre-Closing Restructuring, Intermediate shall issue Intermediate Common Units to Topco, the Crescent Blockers and the Redeemed Crescent Parties in an amount to be determined in accordance with the Pre-Closing Restructuring Plan. Also pursuant to the Pre-Closing Restructuring, Intermediate shall grant to Topco (i) warrants to purchase 3,000,000 Intermediate Common Units at an exercise price of \$10.00 per share and (ii) warrants to purchase 3,000,000 Intermediate Common Units at an exercise price of \$15.00 per share (clauses (i) and (ii) together, the “Intermediate Warrants”).

(b) At least one day prior to the Merger, and pursuant to the terms of the Exchange Agreement, Sponsor and Horizon shall consummate the Sponsor Exchange.

(c) At least one day following the Sponsor Exchange, and upon the terms and subject to the conditions set forth in this Agreement, the Plan of Merger and in accordance with the DGCL and the CICA, at the Effective Time, Horizon and VS PubCo (Horizon and VS PubCo sometimes being referred to herein as the “Constituent Corporations”) shall be merged with VS PubCo being the Surviving Corporation.

(d) Upon consummation of the Merger, the separate corporate existence of Horizon shall cease and VS PubCo, as the Surviving Corporation, shall continue its corporate existence under the DGCL.

(e) At and after the Effective Time, the Surviving Corporation shall thereupon and thereafter possess all of the rights, privileges, powers and franchises, of a public as well as a private nature, of the Constituent Corporations, and shall become subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all rights, privileges, powers and franchises of each Constituent Corporation, and all property, real, personal and mixed, and all debts due to each such Constituent Corporation, on whatever account, shall become vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall become thereafter the property of the Surviving Corporation as they are of the Constituent Corporations; and the title to any real property vested by deed or otherwise or any other interest in real estate vested by any instrument or otherwise in either of such Constituent Corporations shall not revert or become in any way impaired by reason of the Merger; but all Liens upon any property of a Constituent Corporation shall thereafter attach to the Surviving Corporation and shall be enforceable against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; all of the foregoing in accordance with the applicable provisions of the DGCL and the CICA. For the avoidance of doubt, at and after the Effective Time, by virtue of the Merger, the Surviving Corporation shall succeed to all of the rights and obligations of Horizon set forth in this Agreement and the Ancillary Agreements to which Horizon is party.

(f) Subject to the satisfaction or waiver of all of the conditions set forth in [Article VIII](#) of this Agreement, and provided this Agreement has not therefore been terminated pursuant to its terms, at the Closing, Horizon and VS PubCo shall execute the plan of merger (the “[Plan of Merger](#)”) substantially in the form attached as [Exhibit J](#) hereto and shall cause (i) a certificate of merger (as so filed, the “[Merger Certificate](#)”) to be executed and filed with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL and (ii) the Plan of Merger and other documents as required to effect the Merger pursuant to the CICA to be filed with the Registrar of Companies of the Cayman Islands as provided in the applicable provisions of the CICA. The Merger shall become effective upon the later of the time when the Merger Certificate has been accepted for filing by the Secretary of State of the State of Delaware or the Merger has been registered by the Registrar of Companies of the Cayman Islands, or at such later time as may be agreed by Horizon and VS PubCo in writing and specified in the Merger Certificate and Plan of Merger (the “[Effective Time](#)”).

(g) At the Effective Time, (i) the certificate of incorporation of VS PubCo, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with applicable Law and the applicable provisions of the Surviving Corporation Charter and (ii) the bylaws of VS PubCo, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation, until thereafter amended in accordance with applicable Law and the applicable provisions of the Surviving Corporation Governing Documents.

(h) From and after the Effective Time, the Parties shall take all actions necessary so that the Persons identified as the initial directors and officers of the Surviving Corporation in accordance with the provisions of [Section 5.7](#) shall be the directors and officers (and in the case of such officers, holding such positions as set forth on [Section 5.7\(c\)](#) of the VS Disclosure Letter), respectively, of the Surviving Corporation, each to hold office in accordance with applicable Law and the applicable provisions of the Surviving Corporation Governing Documents.

## Section 2.2 [Effect of the Merger on Horizon and VS PubCo Securities.](#)

(a) At the Effective Time, by virtue of the Merger and without any action on the part of any holder of Horizon Common Stock, each share of Horizon Common Stock that is issued and outstanding immediately prior to the Effective Time (other than any shares of Horizon Common Stock held in the treasury of Horizon, which treasury shares shall be cancelled as part of the Merger and shall not constitute “Horizon Common Stock” hereunder) shall no longer be outstanding and shall automatically be cancelled by virtue of the Merger and shall

be converted into the right to receive one (1) duly issued, fully paid and nonassessable share of Class A Common Stock (the “Common Stock Conversion”).

(b) At the Effective Time, pursuant to the terms and conditions of the relevant Warrant Agreement, each Horizon Warrant that is issued and outstanding immediately prior to the Effective Time shall become a Surviving Corporation Common Warrant exercisable for Class A Common Stock in accordance with its terms. In connection therewith and prior to the Effective Time, Horizon and VS PubCo, as applicable, shall take all actions necessary to execute an amendment to the relevant Warrant Agreement with the Warrant Agent providing for the delivery of such Alternative Issuance (as defined in the relevant Warrant Agreement) as of the Effective Time.

(c) At the Effective Time, without any action on the part of Horizon, VS PubCo or a holder of capital stock of VS PubCo, each share of capital stock of VS PubCo that is issued and outstanding immediately prior to the Effective Time shall be cancelled and cease to exist, and no consideration will be delivered in exchange therefor.

(d) Exchange Procedures.

(i) Prior to the Closing, Horizon shall appoint an exchange agent (the “Exchange Agent”) to act as the agent for the purpose of delivering the Class A Common Stock to the Horizon Stockholders. At or before the Effective Time, VS PubCo shall deposit with the Exchange Agent the number of shares of Class A Common Stock the holders of Horizon Common Stock are entitled to receive pursuant to Section 2.2(a).

(ii) Reasonably promptly after the Effective Time, VS PubCo shall send, or shall cause the Exchange Agent to send, to each record holder of uncertificated shares of Horizon Common Stock represented by book entry as of immediately prior to the Effective Time, whose Horizon Common Stock was converted pursuant to Section 2.2(a) into the right to receive Class A Common Stock, a number of shares of Class A Common Stock equal to the number of shares of Horizon Common Stock formerly represented by such book entry shares. Any uncertificated shares of Horizon Common Stock represented by book entry so surrendered shall forthwith be cancelled.

(iii) Each holder of shares of Horizon Common Stock that have been converted into the right to receive Class A Common Stock pursuant to Section 2.2(a), shall be entitled to receive such shares of Class A Common Stock, upon receipt of an “agent’s message” by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request).

(iv) Promptly following the date that is one (1) year after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to deliver to the Surviving Corporation all documents in its possession relating to the transactions contemplated hereby, and the Exchange Agent’s duties shall terminate. Thereafter, any Class A Common Stock that remains unclaimed with the Exchange Agent shall be returned to the Surviving Corporation, and any Person that was a holder of shares of Horizon Common Stock as of immediately prior to the Effective Time that has not exchanged such shares of Horizon Common Stock for Class A Common Stock pursuant to Section 2.2(a) in accordance with this Section 2.2(d) prior to the date that is one (1) year after the Effective Time, may surrender such shares of Horizon Common Stock to the Surviving Corporation and (subject to applicable abandoned property, escheat and similar Laws) receive in consideration therefor, and the Surviving Corporation shall promptly deliver, the number of shares of Class A Common Stock such holder is entitled to received pursuant to Section 2.2(a) without any interest thereupon. None of Horizon, the VS Entities or any of their Subsidiaries, the Surviving Corporation or the Exchange Agent shall be liable to any Person in respect of any Class A Common Stock delivered to a public official pursuant to and in accordance with any applicable abandoned property, escheat or similar Laws. If any such shares shall not have not been surrendered immediately prior to such date on which any Class A Common Stock would otherwise escheat to or become the property of any Governmental Authority, any such shares of Class A Common Stock shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

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Section 2.3 PIPE Subscriptions. At the Closing and immediately following the Effective Time, the Surviving Corporation shall consummate the transactions contemplated by the PIPE Subscriptions in accordance with the PIPE Subscription Agreements.

Section 2.4 Second A&R LLCA. At the Closing, the Current LLCA shall be amended and restated substantially in the form of the Second A&R LLCA.

Section 2.5 Blocker Purchase. At the Closing and immediately following the effectiveness of the Second A&R LLCA, in accordance with the Crescent Purchase Agreement, the Blocker Sellers shall sell, transfer and convey to the Surviving Corporation, and the Surviving Corporation shall purchase and acquire from the Blocker Sellers, all right and title to the Crescent Blocker Shares held by the Blocker Sellers as of the Closing, free and clear of all Liens, other than restrictions arising under applicable securities Laws or the organizational documents of the Crescent Blockers, in exchange for an aggregate cash payment by wire transfer of immediately available funds equal to the Blocker Purchase Price.

Section 2.6 Intermediate Contribution and Issuance; Potential Payment. At the Closing and immediately following the effectiveness of the Second A&R LLCA, Intermediate shall issue to VS PubCo (a) the VS PubCo Matching Intermediate Common Units and (b) the VS PubCo Matching Intermediate Warrants, in each case, free and clear of all Liens, other than restrictions under applicable securities Laws or the Second A&R LLCA, in exchange for an aggregate cash contribution by wire transfer of immediately available funds equal to the Intermediate Contribution Amount. With respect to the Potential Payment that Horizon may receive after the date hereof, (i) if the Potential Payment is received by Horizon or one of its Affiliates at least ten (10) Business Days prior to the Closing (the “Dividend Window”), Horizon shall be permitted to declare a dividend, in accordance with its organizational documents and applicable Law, with a record date after completion of any Horizon Share Redemptions and prior to the Closing Date to distribute the entirety of the Potential Payment received by Horizon or such Affiliate on a pro rata basis to the Horizon stockholders as of such record date, but excluding the PIPE Investors, and (ii) if the Potential Payment is received after the Dividend Window (including, for the avoidance of doubt, after the Closing), the Potential Payment (and the right to receive the Potential Payment) shall be contributed to Intermediate at the Closing as part of the Intermediate Contribution Amount.

Section 2.7 Crescent Redemption. At the Closing and immediately following the effectiveness of the Second A&R LLCA, the Blocker Purchase and the Intermediate Contribution and Issuance, in accordance with the Crescent Purchase Agreement, Intermediate will redeem all of the Intermediate Common Units held by the Redeemed Crescent Parties in exchange for an aggregate cash payment by wire transfer of immediately available funds equal to the Redemption Price.

Section 2.8 Class B Issuance. At the Closing, the Surviving Corporation shall (a) grant to Topco warrants to purchase 6,000,000 Class B Common Stock at an exercise price of \$0.001 per share, which warrants will be granted pursuant to a form to be mutually agreed upon by the parties and exercisable upon the exercise of an equal number of Intermediate Warrants and (b) issue to Topco a number of shares of duly issued, fully paid and nonassessable Class B Common Stock equal to the number of Intermediate Common Units issued to Topco pursuant to Section 2.1(a), free and clear of all Liens, other than restrictions arising under applicable securities Laws, the Surviving Corporation Governing Documents or the Ancillary Agreements, in exchange for adequate consideration (clauses (a) and (b) together, the “Class B Issuance”).

Section 2.9 Closing. In accordance with the terms and subject to the conditions of this Agreement, the closing of the Transactions (the “Closing”) shall take place electronically through the exchange of documents via email or facsimile on the date which is two (2) Business Days after the first date on which all conditions set forth in Article VIII shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver thereof) or such other time and place as Topco and Horizon may mutually agree in writing. The date on which the Closing actually occurs is referred to in this Agreement as the “Closing Date”.

Section 2.10 Closing Deliverables.

- (a) At the Closing, the VS Entities will deliver or cause to be delivered:
  - (i) to Horizon, a certificate signed by an officer of each VS Entity, dated the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 8.2(a), Section 8.2(b), and Section 8.2(c) have been fulfilled;
  - (ii) to Horizon, duly executed counterparts to the Second A&R LLCA;
  - (iii) to Horizon, duly executed counterparts to the Tax Receivable Agreement;
  - (iv) to the Horizon Entities, duly executed counterparts to the Stockholders' Agreement; and
  - (v) to Horizon, duly executed counterparts to the Registration Rights Agreement.

- (b) At the Closing, Horizon will deliver or cause to be delivered:
  - (i) to the VS Entities, a certificate signed by an officer of Horizon, dated the Closing Date, certifying that, to the knowledge and belief of such officer, the conditions specified in Section 8.3(a), Section 8.3(b) and Section 8.3(c) have been fulfilled;
  - (ii) to the VS Entities, the written resignations of all of the directors and officers of Horizon, effective as of the Effective Time;
  - (iii) to the VS Entities, duly executed counterparts to the Tax Receivable Agreement;
  - (iv) to the VS Entities, a duly executed counterpart to the Stockholders' Agreement; and
  - (v) to the VS Entities, duly executed counterparts to the Registration Rights Agreement.

(c) On the Closing Date, Intermediate shall pay or cause to be paid by wire transfer of immediately available funds, (i) all accrued and unpaid Horizon Transaction Expenses as set forth on a written statement to be delivered to the VS Entities not less than two (2) Business Days prior to the Closing Date, which shall include the respective amounts and wire transfer instructions for the payment thereof, and (ii) all accrued and unpaid VS Transaction Expenses as set forth on a written statement to be delivered to Horizon not less than two (2) Business Days prior to the Closing Date, which shall include the respective amounts and wire transfer instructions for the payment thereof; provided that any VS Transaction Expenses due to current or former employees, independent contractors, officers, or directors of the VS Companies shall be paid to such VS Company for further payment to such employee, independent contractor, officer or director through such VS Company's payroll.

(d) On the Closing Date, immediately following the consummation of the Merger, the PIPE Subscriptions, the Horizon Share Redemptions, the Blocker Purchase, the Crescent Redemption and payment of the VS Transaction Expenses and the Horizon Transaction Expenses, the Surviving Corporation shall use, or cause Intermediate and its Subsidiaries to use, any remaining cash proceeds from the Transaction (which such cash proceeds shall consist solely of cash and cash equivalents of Horizon immediately prior to the Merger and the net proceeds of the PIPE Subscriptions) to repay or cause to be repaid by wire transfer of immediately available funds, the accrued and unpaid Indebtedness and preferred stock of the VS Companies. For the avoidance of doubt, this Section 2.10(d) shall not require that cash and cash equivalents held by the VS Companies immediately prior to the Effective Time be used to repay Indebtedness of the VS Companies.

Section 2.11 Withholding. Horizon, the Surviving Corporation and the VS Entities and their Subsidiaries, as applicable, shall be entitled to deduct and withhold (or cause to be deducted and withheld) from any amount payable pursuant to this Agreement such amounts as may be required to be deducted and withheld under the Code or any other applicable Law, Horizon and the Surviving Corporation shall use commercially reasonable best efforts to provide at least three (3) Business Days advance notice to Topco of any withholding that it intends to make from amounts payable to any VS Entity. The Parties shall cooperate reasonably and in good faith to



eliminate or reduce any such deduction or withholding to the extent permitted by applicable Law (including through the request and provision of any statements, forms or other documents to reduce or eliminate any such deduction or withholding). To the extent that any amounts are so deducted and withheld consistent with the terms of this [Section 2.11](#) and remitted to the applicable Governmental Authority, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### ARTICLE III

#### **REPRESENTATIONS AND WARRANTIES OF THE VS ENTITIES**

Except (i) as set forth in the disclosure letter delivered to Horizon by the VS Entities on the date of this Agreement (the “[VS Disclosure Letter](#)”) (each section of which, subject to [Section 10.9](#), qualifies the correspondingly numbered and lettered representations in this [Article III](#)) and (ii) as otherwise explicitly contemplated by the Pre-Closing Restructuring, in each case, the VS Entities represent and warrant to Horizon as follows:

Section 3.1 [Company Organization](#). Each of the VS Entities has been duly formed or organized and is validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization, and each has the requisite company or corporate power, as applicable, and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. Each of the VS Entities is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. True and complete copies of the Governing Documents of each of the VS Entities have been made available to Horizon prior to the date of this Agreement.

Section 3.2 [Subsidiaries](#). A complete list of each Subsidiary of Intermediate (after giving effect to the Pre-Closing Restructuring) and its jurisdiction of incorporation, formation or organization, as applicable, as of the date hereof is set forth on [Section 3.2](#) of the VS Disclosure Letter. The Subsidiaries of Intermediate have been duly formed or organized and are validly existing under the Laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, lease or operate all of their respective properties and assets and to conduct their respective businesses as they are now being conducted. Each Subsidiary of Intermediate is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. True and complete copies of the Governing Documents of each Subsidiary have been made available to Horizon prior to the date of this Agreement.

Section 3.3 [Due Authorization](#). Each of the VS Entities has all requisite company or corporate power, as applicable, and authority to execute, deliver and perform under this Agreement and the other documents to which it is or will be a party contemplated hereby and (subject to the approvals described in [Section 3.5](#)) to consummate the Transactions and to perform all of its obligations hereunder and thereunder. The execution, delivery and performance by each of the VS Entities of this Agreement and the other documents to which any VS Entity is or will be a party contemplated hereby and the consummation of the Transactions have been duly and validly authorized and approved by the Managing Member, Board of Managers or Board of Directors, as applicable, of each such VS Entity, and no other company or corporate proceeding on the part of the VS Entities is or will be necessary to authorize this Agreement and the other documents to which any VS Entity is or will be a party

contemplated hereby, in each case, as applicable. This Agreement has been, and on or prior to the Closing, the other documents to which any VS Entity is or will be a party contemplated hereby will be, duly and validly executed and delivered by each such VS Entity and this Agreement constitutes, and on or prior to the Closing, the other documents to which any VS Entity is or will be a party contemplated hereby will constitute, a legal, valid and binding obligation of each such VS Entity, enforceable against each such VS Entity, in each case, as applicable, in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

Section 3.4 No Violation. Subject to the receipt of the consents, approvals, authorizations and other requirements set forth in Section 3.5 and except as set forth on Section 3.4 of the VS Disclosure Letter, the execution, delivery and performance by the VS Entities of this Agreement and the documents to which any VS Entity is or will be a party contemplated hereby and the consummation of the Transactions do not and will not (a) violate any provision of, or result in the breach of, or default under (in each case, with or without notice or lapse of time, or both) the Governing Documents of the VS Entities, (b) violate any provision of, or result in the breach of, or default under (in each case, with or without notice or lapse of time, or both) any Law or Governmental Order applicable to any VS Entity or any of the VS Entities' Subsidiaries, (c) violate any provision of, or result in the breach of, result in (in each case, with or without notice or lapse of time, or both) the loss of any right or benefit, require any consent, waiver, approval, authorization, notice or other action by any Person (other than the VS Entities or their Subsidiaries), or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Governmental Permit or Contract to which any VS Entity or any of the VS Entities' Subsidiaries is a party or by which any VS Entity or any of the VS Entities' Subsidiaries may be bound, or terminate or result in the termination of any such Governmental Permit or Contract or (d) result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets of any VS Entity or any of the VS Entities' Subsidiaries, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.5 Governmental Authorizations. Assuming the truth and completeness of the representations and warranties of Horizon contained in this Agreement, no consent, waiver, approval or authorization of, or designation, declaration or filing with, or notification to, any Governmental Authority (each, a "Governmental Authorization") is required on the part of any of the VS Entities or their Subsidiaries with respect to any VS Entity's execution, delivery or performance of this Agreement or the Ancillary Agreements or consummation by the VS Entities of the Transactions, except for (i) any consents, approvals, authorizations, designations, declarations, waivers, notices or filings, the absence of which would not, individually or in the aggregate, reasonably be expected to have (A) a Company Material Adverse Effect or (B) a material adverse effect on the ability of the VS Entities or their Subsidiaries to perform or comply with on a timely basis any material obligation of the VS Entities or their Subsidiaries under this Agreement or the Ancillary Agreements or to consummate the Transactions, (ii) any consents, approvals, authorizations, designations, declarations, waivers or filings related to the SEC, NASDAQ or the New York Stock Exchange (the "NYSE") or in connection with the Plan of Merger or Merger Certificate and (iii) the Regulatory Approvals.

Section 3.6 Capitalization of the VS Companies.

(a) The VS Company Interests comprise all of the VS Companies' authorized equity interests that are issued and outstanding. Except as set forth on Section 3.6(a) of the VS Disclosure Letter, all of the issued and outstanding VS Company Interests (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law and all requirements set forth in the Governing Documents of the VS Companies; (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of the VS Companies or any Contract to which any VS Company is a party or otherwise bound; and (iv) are free and clear of any Liens other

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than restrictions arising under applicable securities Laws and the Governing Documents of such VS Company (as applicable). After giving effect to the Pre-Closing Restructuring and the other Transactions, the Surviving Corporation and Hoya Topco will together own 100% of Intermediate and Intermediate will own, directly or indirectly, 100% of the other VS Companies.

(b) Except as set forth on Section 3.6(b) of the VS Disclosure Letter, none of the VS Companies have granted any outstanding subscriptions, options, stock appreciation rights, “phantom units,” warrants, commitments, calls, rights of first refusal, deferred compensation rights, rights or other securities (including debt securities or voting securities) convertible into or exchangeable or exercisable for VS Company Interests, any other commitments, calls, conversion rights, rights of exchange or privilege (whether pre-emptive, contractual or by matter of Law), plans or other agreements, arrangements or commitments of any character providing for the issuance of additional shares or any other equity securities of any of the VS Companies, the sale of treasury shares or other equity interests, or for the repurchase or redemption of shares or other equity interests of any of the VS Companies or the value of which is determined by reference to shares or other equity interests of any of the VS Companies, and there are no voting trusts, proxies or agreements of any kind which may obligate the VS Companies to issue, purchase, register for sale, redeem or otherwise acquire any VS Company Interests.

### Section 3.7 Topco Incentive Units.

(a) Certain employees of the VS Companies receive equity compensation in the form of incentive units of Topco, which, as of the date hereof, consist of, in the aggregate, (i) 855,000 issued and outstanding Class B-1 Incentive Units of Topco, (ii) 855,000 issued and outstanding phantom units of Topco, (iii) 2,040,840 issued and outstanding Class D Units of Topco and (iv) 500,765 issued and outstanding Class E Units of Topco (collectively, the “Incentive Units”).

(b) All of the issued and outstanding Incentive Units (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law and all requirements set forth in the Governing Documents of Topco; (iii) have not been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Governing Documents of Topco or any Contract to which Topco is a party or otherwise bound; and (iv) are free and clear of any Liens other than restrictions arising under applicable securities Laws and the Governing Documents of Topco (as applicable).

### Section 3.8 Financial Statements.

(a) Attached as Section 3.8(a) of the VS Disclosure Letter are true and complete copies of the audited consolidated balance sheets and statements of operations and comprehensive loss, cash flow and change in members’ equity of Topco and its Subsidiaries as of and for the years ended December 31, 2020 and December 31, 2019, together with the auditor’s report thereon (the “Financial Statements”).

(b) Except as set forth on Section 3.8(b) of the VS Disclosure Letter, the Financial Statements and, when delivered pursuant to Section 5.3, the Q1 Financial Statements, Q2 Financial Statements and Q3 Financial Statements, in each case, (i) fairly present in all material respects the consolidated financial position of Topco and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations, their consolidated incomes, their consolidated changes in members’ equity (with respect to the Financial Statements only) and their consolidated cash flows for the respective periods then ended (subject, in the case of the Q1 Financial Statements, Q2 Financial Statements and Q3 Financial Statements, to normal and recurring year-end adjustments and the absence of footnotes), (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in (A) the notes thereto and, in the case of the Q1 Financial Statements, Q2 Financial Statements and Q3 Financial Statements, the absence of footnotes and (B) changes resulting from normal year-end adjustments (none of which, individually or in the aggregate, shall be material), (iii) were prepared from, and are in accordance in all material respects with, the

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books and records of Topco and its consolidated Subsidiaries and (iv) when delivered by Topco for inclusion in the Proxy Statement/Registration Statement for filing with the SEC following the date of this Agreement in accordance with Section 5.3, will comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act applicable to a registrant, in effect as of the respective dates thereof.

(c) Topco and its Subsidiaries have in place disclosure controls and procedures to reasonably ensure that material information relating to Topco and its Subsidiaries is made known to the management of Topco and its Subsidiaries by others within Topco and its Subsidiaries, including (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the ability of Topco or its Subsidiaries to record, process, summarize and report financial data and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of Topco and its Subsidiaries. Such controls and procedures are sufficient to provide reasonable assurance that (A) transactions are executed in material accordance with management's general or specific authorizations, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (C) access to assets is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Section 3.9 Undisclosed Liabilities. Except as set forth on Section 3.9 of the VS Disclosure Letter, as of the date of this Agreement, there is no liability, debt (including Indebtedness) or obligation of, or claim or judgment of any kind against, Intermediate or any of its Subsidiaries (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, due or to become due or otherwise) that would be required to be set forth on a balance sheet of Intermediate and its Subsidiaries prepared in accordance with GAAP, except for liabilities, debts, obligations, claims or judgments (a) reflected or reserved for on the Financial Statements or disclosed in the notes thereto, (b) that have arisen since the date of the most recent balance sheet included in the Financial Statements in the ordinary course of business (none of which relates to breach of contract, breach of warranty, tort, infringement, any lawsuit, a violation of law), (c) that will be discharged or paid off prior to or at the Closing, (d) arising under this Agreement and/or the performance by the VS Entities of their obligations hereunder, or (e) that would not reasonably be expected to, individually or in the aggregate, result in material liability to the VS Companies, taken as a whole.

Section 3.10 Litigation and Proceedings. Except as set forth on Section 3.10 of the VS Disclosure Letter, as of the date of this Agreement, (a) there are no pending or, to the knowledge of the VS Companies, threatened, lawsuits, actions, suits, charges, mediations, complaints, investigations, audits, arbitrations, judgments, claims or other proceedings (whether federal, state, local or foreign), at law or in equity (collectively, "Legal Proceedings") against or by any VS Company or their respective properties, assets or business; (b) no investigations, audits or other inquiries are pending or, to the knowledge of the VS Companies, threatened by any Governmental Authority, against any VS Company or their respective properties, assets or business; and (c) there is no outstanding Governmental Order imposed upon any VS Company, nor are any properties or assets of any VS Company bound by or subject to any Governmental Order, except, in the case of each of clauses (a) – (c), as has not been, and would not reasonably be expected to be, individually or in the aggregate, materially adverse to the VS Companies, taken as a whole.

Section 3.11 Legal Compliance.

(a) Each VS Company is, and for the past three (3) years has been, in compliance with all applicable Laws of applicable Governmental Authorities that are applicable to such VS Company or by which any property or asset of such VS Company is bound, except where such non-compliance would not reasonably be expected to be, individually or in the aggregate, materially adverse to the VS Companies, taken as a whole. In the past three (3) years, the VS Companies have not received any written notice of or been charged with the violation of any Laws, except where such violation has not been, or would not reasonably be expected to be, individually or in the aggregate, materially adverse to the VS Companies, taken as a whole.

(b) Each VS Company holds, and is in compliance with, all Governmental Permits necessary for the lawful conduct of its respective businesses or ownership of its respective assets and properties, except where such failure to hold or non-compliance has not had, or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. All such Governmental Permits are in full force and effect and are being complied with, except where the failure of such Governmental Permits to be in full force and effect has not been, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There has been no decision by any VS Company not to renew any Governmental Permit in the ordinary course of business. No Legal Proceeding is pending or, to the knowledge of the VS Companies, threatened, by any Governmental Authority seeking the revocation, limitation, suspension, withdrawal, modification or nonrenewal of any such Governmental Permit, except such Legal Proceedings that have not been, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.12 Contracts; No Defaults.

(a) Section 3.12(a) of the VS Disclosure Letter contains a listing of all Contracts described in clauses (i) through (xix) below to which, as of the date of this Agreement, any VS Company is a party or by which they are bound. True, correct and complete copies of the Contracts listed on Section 3.12(a) of the VS Disclosure Letter have been delivered to or made available to Horizon or its agents or representatives prior to the date of this Agreement.

(i) any collective bargaining agreement or other Contract with any labor union, labor organization, works counsel or other employee representative (each a “CBA”);

(ii) any Contract for the settlement or compromise of any Legal Proceeding under which any of the VS Companies will have any material outstanding obligation after the date of this Agreement;

(iii) any Contract relating to Indebtedness by a VS Company or any guarantee or loan by any VS Company, in each case, representing obligations in excess of \$500,000;

(iv) any Contracts involving any joint venture, partnership, joint development, revenue sharing or similar agreement, in each case, of a material nature;

(v) Contracts under which any VS Company (x) is a licensee of any material Intellectual Property owned by any third party (other than “shrink-wrap,” “click-wrap,” and “off-the-shelf” software licenses and other licenses of commercially-available software with one-time or annual license, maintenance, support and other fees of \$75,000 or less), (y) is a licensor of or otherwise grants to a third party any rights to use any item of material Owned Intellectual Property, other than non-exclusive licenses granted in the ordinary course of business, or (z) is a party and that restricts or otherwise adversely affects, in any material respect, a VS Company’s ownership of or ability to use, register, license or enforce any of its material Owned Intellectual Property (including concurrent use agreements, settlement agreements and coexistence agreements);

(vi) any Contract with any Governmental Authority;

(vii) any Contract (A) limiting or restricting the ability of a VS Company to enter into or engage in any market or line of business or to compete with any Person or in any geographic area and (B) limiting or restricting the ability of any VS Company to otherwise conduct business as presently conducted in any material manner or place;

(viii) any revocable or irrevocable power of attorney granted by any VS Company to any Person for any purpose whatsoever;

(ix) any agreement with respect to the acquisition or disposition of any business, material assets or securities, or any equity or debt investment in any Person other than in the ordinary course of business and under which there is any surviving obligation of any VS Company;

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(x) any agreements or series of related agreements with suppliers and vendors to which any VS Company is a party for the purchase of goods or services involving aggregate payments in excess of \$500,000 during the year ended December 31, 2020 or expected to involve aggregate payments in excess of \$500,000 during the year ended December 31, 2021, in each case, which cannot be cancelled by the VS Company or any of its Subsidiaries without payment or penalty upon notice of thirty (30) days or less, and whose unexpired term as of the Closing Date exceeds one year;

(xi) any agreements relating to any Related Party Transaction;

(xii) Contracts which involve commitments to make capital expenditures by any VS Company in excess of \$250,000;

(xiii) the VS Companies' top five (5) sponsorship agreements by expenditure as of December 31, 2020;

(xiv) Contracts with the VS Companies' top five (5) largest "white label" affiliates by revenue;

(xv) each lease, rental or occupancy agreement, license, installment and conditional sale agreement or similar agreement under which any VS Company is a lessor, sublessor of, or makes available for use by any third party, any tangible personal property owned or leased by any VS Company, in any case which has future required scheduled payments in excess of \$250,000 per annum and is not terminable by it upon notice of sixty (60) calendar days or less for a cost of less than \$250,000, and other Contract that provides for the leasing of, use of, or any leasehold or other interest in any real or personal property and involves aggregate payments in excess of \$250,000 in any calendar year; and

(xvi) Contracts for the employment or engagement of any individual service provider of any of the VS Companies (A) that provide for annual base salary compensation greater than \$300,000 or (B) that provide for the payment and/or accelerated vesting of any compensation or benefits upon the consummation of the transactions contemplated by this Agreement.

(b) With such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) all of the Contracts to which any VS Company is a party or by which they are bound are in full force and effect and represent the legal, valid and binding obligations of the VS Company party thereto and, to the knowledge of the VS Companies, represent the legal, valid and binding obligations of the counterparties thereto; and (ii) (x) the VS Companies have performed in all respects all respective obligations required to be performed by them to date under the Contracts to which any VS Company is a party or by which they are bound, and neither the VS Companies nor, to the knowledge of the VS Companies, any other party thereto is in breach of or default under any such Contract, (y) during the last twelve (12) months, none of the VS Companies has received any written claim or notice of termination or breach of or default under any such Contract, and (z) no event has occurred which individually or together with other events, would reasonably be expected to result in a breach of or a default under any such Contract by the VS Companies or, to the knowledge of the VS Companies, any other party thereto (in each case, with or without notice or lapse of time or both). The VS Parties have made available to Horizon true and complete copies of all Contracts (or have provided written summaries of oral Contracts) set forth on Section 3.12(a) of the VS Disclosure Letter.

### Section 3.13 Company Benefit Plans.

(a) Section 3.13(a) of the VS Disclosure Letter sets forth a true and complete list, by the jurisdiction, of each material Company Benefit Plan (excluding, for the avoidance of doubt, any employment or consulting contracts for employees or consultants who are natural persons where the annual base salary and cash bonus opportunity provided under such employment or consulting agreement is less than \$400,000 per annum, in the aggregate). For purposes of this Agreement, a "Company Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") (whether or not subject to ERISA) and any other plan, policy, program or agreement (including any employment,

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consulting, service, bonus, incentive or deferred compensation, profit sharing, equity or equity-based compensation, severance, retention, pension supplemental retirement, change in control, vacation, paid time off, health, dental, life insurance, disability, fringe benefit or similar plan, policy, program or agreement), written or unwritten, funded or unfunded, providing compensation or other benefits to any current or former director, officer, individual consultant, or employee or individual service provider which are maintained, sponsored or contributed to (or required to be contributed to) by any VS Company or otherwise with respect to which any VS Company has any current or contingent liability, in each case whether or not subject to the Laws of the United States or funded, but excluding in each case any statutory plan, program or arrangement that is required under applicable law and maintained by any Governmental Authority (any such plan, a “Governmental Plan”).

(b) Except as has not had, or would not reasonably be expected to result in Company Material Adverse Effect, (i) each Company Benefit Plan has been established, maintained, funded, operated and administered in compliance with its terms and all applicable Laws, including ERISA and the Code, (ii) all contributions, premiums and other payments that are due in respect of a Company Benefit Plan and Governmental Plan have been timely paid, and any such amounts not yet due have been paid or properly accrued, and (iii) there have been no “prohibited transactions” within the meaning of Section 4975 of the Code or Sections 406 or 407 of ERISA and, to the knowledge of the VS Companies, not otherwise exempt under Section 408 of ERISA and no breaches of fiduciary duty (as determined under ERISA) with respect to any Company Benefit Plan.

(c) Each Company Benefit Plan which is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS as to its qualification or may rely upon an opinion letter for a prototype plan and, to the knowledge of the VS Companies, no fact or event has occurred that could reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan. Each Company Benefit Plan that is maintained primarily for the benefit of any current or former director, officer, individual consultant, worker or employee outside of the United States and is subject to the laws of a jurisdiction other than the United States, whether or not United States law also applies is in compliance in all material respects with all applicable Laws and requirements of applicable regulatory authorities.

(d) No Company Benefit Plan (i) is a multiemployer pension plan (as defined in Section 3(37) of ERISA) (a “Multiemployer Plan”) or (ii) is a “defined benefit” plan (as defined in Section 3(35) of ERISA) or any other plan that is subject to Title IV of ERISA (“Title IV Plan”), and neither the VS Companies nor any of their ERISA Affiliates have sponsored or contributed to, been required to contribute to, or had any actual or contingent liability under, a Multiemployer Plan or Title IV Plan at any time within the previous six (6) years. None of the VS Companies has any material liability by reason of at any time being treated as a single employer with any other Person under Section 414 of the Code. No Company Benefit Plan is a “registered pension plan” or “salary deferral arrangement”, each as defined in section 248(1) of the *Income Tax Act* (Canada).

(e) Except as would not reasonably be expected to result in a Company Material Adverse Effect, with respect to the Company Benefit Plans, no Legal Proceedings (other than routine claims for benefits in the ordinary course) are pending or, to the knowledge of the VS Companies, threatened.

(f) No Company Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the VS Companies for periods extending beyond their retirement or other termination of service, other than coverage mandated by applicable Law for which the covered Person pays the full premium cost of coverage. Except as would not reasonably be expected to result in a Company Material Adverse Effect, no VS Company has incurred (whether or not assessed) any Tax or penalty under Sections 4980B, 4980D, 4980H, 6721 or 6722 of the Code.

(g) Except as set forth on Section 3.13(g) of the VS Disclosure Letter, neither the execution and delivery of this Agreement nor the consummation of the Transactions will (i) entitle any current or former



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director, employee, officer or other service provider of the VS Companies to any severance pay or any other compensation payable by the VS Companies, except as expressly provided in this Agreement, (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation or benefits due any such director, employee, officer or other individual service provider by the VS Companies, or (iii) result in the payment of any “excess parachute payment” to any “disqualified individual” (each, within the meaning of Section 280G of the Code).

(h) No VS Company has any obligation (whether actual or contingent) to gross-up or reimburse any individual for any Taxes incurred by such individual, including under Sections 409A or 4999 of the Code or otherwise.

(i) Each Company Benefit Plan that constitutes in any part a nonqualified deferred compensation plan within the meaning of Section 409A of the Code has been operated and maintained in all material respects in operational and documentary compliance with Section 409(A) of the Code and applicable guidance thereunder.

### Section 3.14 Labor Relations: Employees.

(a) Except as set forth on Section 3.14(a) of the VS Disclosure Letter, none of the VS Companies is a party to or bound by any CBA, works council agreement, or any similar Contract or any bargaining relationship with any labor union, works council, labor organization or other employee representative; no such agreement is being negotiated by any VS Company; no labor union, works council, labor organization or any other employee representative body has requested or, to the knowledge of the VS Companies, has sought to represent any of the employees of the VS Companies; and none of the employees of any of the VS Companies is represented by a labor union, works council, labor organization or employee representative with respect to their employment with any VS Company. To the knowledge of the VS Companies, there has been no labor organizing activity involving any employees of the VS Companies. In the past three (3) years, there has been no actual or, to the knowledge of the VS Companies, threatened unfair labor practice charge, material grievance, arbitration, strike, slowdown, work stoppage, lockout, picketing, hand billing, or other material labor dispute against or affecting the VS Companies.

(b) The VS Companies are, and have been for the past three (3) years, in compliance in all material respects with all applicable Laws respecting labor and employment, including all Laws respecting terms and conditions of employment, employment standards, health and safety, wages and hours, holiday pay and the calculation of holiday pay, working time, employee classification (with respect to both exempt vs. non-exempt status and employee vs. independent contractor and worker status), child labor, immigration (including with respect to the completion of Forms I-9 and visa requirements), employment harassment, discrimination and retaliation, human rights accessibility, pay equity, COVID-19, disability rights or benefits, equal opportunity and equal pay, plant closures and layoffs (including the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar Laws (“WARN Act”)), affirmative action, workers’ compensation, labor relations, employee leave issues, paid time off, and unemployment insurance. There are no material Legal Proceedings pending or, to the knowledge of the VS Companies, threatened, relating to current or former employees of any VS Company.

(c) Except as would not result in material liability for any VS Company: (i) each VS Company has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, severance and termination payments, fees, and other compensation that have come due and payable to its current and former employees and independent contractors under applicable Law, Contract or company policy; and (ii) each individual who is providing or within the past three (3) years has provided services to any VS Company and is or was classified and treated as an independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(d) To the knowledge of the VS Companies, all sexual harassment, or other discrimination, retaliation or policy violation allegations within the past three (3) years have been investigated and addressed in accordance



with applicable Law. The VS Companies do not reasonably expect any material liability with respect to any such allegations.

(e) No employee layoff, facility closure or shutdown (whether voluntary or by Order), reduction-in-force, furlough, temporary layoff, material work schedule change or reduction in hours, or material reduction in salary or wages has occurred since March 1, 2020 or is currently contemplated, planned or announced, as a result of COVID-19 or any Law, directive, guidelines or recommendations by any Governmental Authority in connection with or in response to COVID-19.

Section 3.15 Taxes.

(a) All income and other material Tax Returns required by Law to be filed by the VS Companies have been timely filed, and all such Tax Returns are true, complete and accurate in all material respects.

(b) All income and other material Taxes due and owing by the VS Companies (whether or not reflected on any Tax Return) have been duly and timely paid in full.

(c) The VS Companies have (i) timely withheld and remitted to the appropriate Governmental Authority all material amounts required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, other service provider, equity interest holder or other third-party, and (ii) complied in all material respects with all applicable Laws relating to the collection, withholding, and remittance of Taxes and information reporting relating to Taxes.

(d) None of the VS Companies are currently the subject of or otherwise engaged in any material Tax audit, examination, investigation or other proceeding (judicial or administrative) with a Governmental Authority, nor has any VS Company received written notice from any Governmental Authority indicating that any such Tax audit, examination, investigation, or other proceeding is forthcoming.

(e) None of the VS Companies have received any written claimed, proposed, asserted, or threatened deficiency, assessment, or adjustment with respect to a material amount of Taxes that has not been resolved in full. None of the VS Companies have waived or extended the statute of limitations with respect to any assessment or potential assessment or collection or potential collection of a material amount of Taxes which waiver or extension is still in effect, nor is any request from any Governmental Authority for any such waiver or extension outstanding.

(f) There are no Liens with respect to material Taxes on any of the assets of the VS Companies, other than Permitted Liens.

(g) No “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. Law), private letter ruling, or technical advice memorandum concerning Taxes has been entered into, or issued by, or requested from any Governmental Authority with respect to a VS Company that would be effective after the Closing Date.

(h) No VS Company is or has ever been a party to any “listed transaction” as defined in Section 6707A of the Code and Treasury Regulations Section 1.6011-4.

(i) No VS Company has been a distributing corporation or a controlled corporation in a transaction purported or intended to be governed in whole or in part by Section 355 of the Code (or so much of Section 356 of the Code as relates to Section 355 of the Code).

(j) No VS Company (i) has been a member of an “affiliated group” (within the meaning of Section 1504 of the Code (or any corresponding or similar provision of state, local, or non-U.S. Law), (ii) has

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any liability for the Taxes of any Person (other than a VS Company) under Section 1.1502-6 of the Treasury Regulations (or any corresponding or similar provision of state, local, or non-U.S. Law), as a transferee or successor, by operation of Law, or by Contract (other than any customary provisions contained in a commercial Contract entered into in the ordinary course of business and the principal purpose of which does not relate to Taxes), or (iii) is a party to any Tax allocation, Tax sharing, Tax indemnity, or other similar Contract (other than any (x) Contract solely between or among the VS Companies and (y) any customary provisions contained in a commercial Contract entered into in the ordinary course of business and the principal purpose of which does not relate to Taxes).

(k) No VS Company will be required to pay any material Tax after the Closing Date as a result of any deferral of a payment obligation or advance of a credit with respect to Taxes to the extent relating to any action, election, deferral, filing, or request made or taken by any VS Company (including the non-payment of a Tax) on or prior to the Closing Date (including (1) the delay of payment of employment Taxes under any COVID-19 Tax Measure or any similar notice or order or law, and (2) the advance refunding or receipt of credits under any COVID-19 Tax Measure (including, without limitation, Section 3606 of the CARES Act)).

(l) No VS Company will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for a taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in or use of an improper method of accounting for a taxable period (or portion thereof) ending on or before to the Closing Date (including as a result of any adjustment under Section 481 of the Code or any corresponding or similar provision of state, local, or non-U.S. Law), (ii) installment sale or open transaction disposition transaction made on or prior to the Closing Date, (iii) prepaid amount, advanced amount, or deferred revenue received on or prior to the Closing Date, or (iv) application of Code Section 965 (including any installment payment attributable to an election under Code 965(h)).

(m) No VS Company is (or, at any point during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, has been) a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code. No VS Company is or, within the prior six years, has been (i) a “controlled foreign corporation” as defined in Section 957 of the Code, or (ii) a “passive foreign investment company” as defined Section 1297 of the Code.

(n) No written claims have been made in the last six (6) years by any Governmental Authority in a jurisdiction where a VS Company does not file Tax Returns that such VS Company is or may be subject to Tax by, or required to file any Tax Return in, that jurisdiction. No VS Company has ever had a permanent establishment (within the meaning of an applicable Tax treaty) or other taxable presence in any country other than the country in which it is organized.

(o) Intermediate is and at all times since formation been classified as a partnership for U.S. federal (and applicable state and local) income Tax purposes and not as a publicly traded partnership within the meaning of Section 7704(b) of the Code. Intermediate has not made any election or otherwise taken any action to cause the Partnership Tax Audit Rules to apply to Intermediate at any earlier date than is required by Law. Section 3.15(o) of the VS Disclosure Letter lists the U.S. federal income Tax classification of each VS Company since its respective formation.

(p) VividSeats Canada Ltd. has not applied for, claimed, or received a refund of an amount decreed, under section 125.7 of the *Income Tax Act* (Canada), to be an overpayment of Tax owing under Part I of the *Income Tax Act* (Canada) to which it was not entitled pursuant to applicable Law.

(q) Each VS Company has complied in all material respects with Laws relating to escheat and unclaimed property.

(r) None of the intangible assets of the VS Companies were used by the VS Companies or a related person (as defined in Section 197(f)(9)(C) of the Code) to a VS Company in a trade or business conducted on or before August 10, 1993.

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(s) VS PubCo was formed for the sole purpose of effecting the Merger and the other Transactions contemplated hereby and has not engaged in business activities or conducted any operations other than in connection with the Merger and the other Transactions contemplated hereby and has not had, and at all times prior to the Effective Time, will not have, any assets, liabilities or obligations other than those incident to its formation and the Merger and the other Transactions contemplated hereby.

(t) No VS Company has taken any action (or permitted any action to be taken), nor is aware of any fact or circumstance, that could reasonably be expected to prevent or impede the Merger from qualifying as a “reorganization” within the meaning of Section 368(a)(1)(F) of the Code.

### Section 3.16 Property.

(a) Section 3.16(a) of the VS Disclosure Letter sets forth a true, correct and complete list as of the date of this Agreement of all material Leased Real Property and all Real Property Leases (as hereinafter defined) pertaining to such Leased Real Property (including the date and name of the parties to each lease document). With such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) all of the leases, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in to the Leased Real Property by or to any VS Company, including all amendments and modifications thereof (collectively, the “Real Property Leases”) are in full force and effect and represent the legal, valid and binding obligations of the VS Company party thereto and, to the knowledge of the VS Companies, represent the legal, valid and binding obligations of the counterparties thereto; and (ii) (x) the VS Companies have performed in all respects all respective obligations required to be performed by them to date under the Real Property Leases to which any VS Company is a party or by which they are bound, and neither the VS Companies nor, to the knowledge of the VS Companies, any other party thereto is in breach of or default under any such Real Property Lease, (y) during the last twelve (12) months, none of the VS Companies has received any written claim or notice of termination or breach of or default under any such Real Property Lease, and (z) no event has occurred which, with the delivery of notice, the passage of time or both, individually or together with other events, would reasonably be expected to result in a breach of or a default, or would permit the acceleration of rent under any such Real Property Lease by the VS Companies or, to the knowledge of the VS Companies, any other party thereto. The Leased Real Property is in good condition and repair in all material respects, normal wear and tear excepted. The VS Companies have delivered a true and complete copy of each Real Property Lease prior to the date of this Agreement.

(b) None of the VS Companies has any ownership in any real property.

(c) With such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the VS Companies have good title to or valid leasehold or license interests in all of the assets and personal property that they purport to own, lease or license (including those assets reflected on the Financial Statements), free and clear of any and all Liens other than Permitted Liens. Such assets and properties constitute all of the assets and personal properties which are owned, used or held for use in the conduct by the VS Companies of their businesses as they are currently conducted or contemplated to be conducted.

### Section 3.17 Environmental, Health and Safety.

(a) The VS Companies are, and for the past three (3) years have been, in compliance in all material respects with Environmental Laws, which compliance includes obtaining, maintaining, and complying in all material respects with all permits required under Environmental Laws.

(b) The VS Companies have not received in the past three (3) years any written claims, notices or other information, and there are no Legal Proceedings pending or, to knowledge of the VS Companies, threatened against any VS Company, in each case, alleging material violations of or material liability under any Environmental Law.

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(c) None of the VS Companies have treated, stored, disposed of, arranged for the disposal of, transported, handled, released, exposed any Person to, or owned or operated any property or facility contaminated by, any Hazardous Materials, in each case so as to give rise to material liability under Environmental Laws.

(d) None of the VS Companies have assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any material liability of any other Person under any Environmental Laws or with respect to Hazardous Materials.

(e) The VS Companies have made available to Horizon copies of all material environmental assessments, audits and reports relating to the current or former properties, facilities or operations of any VS Company in the possession or under the reasonable control of any VS Company.

### Section 3.18 Intellectual Property; Data Privacy.

(a) Section 3.18(a) of the VS Disclosure Letter lists all (a) patents and patent applications, (b) registered trademarks and trademark applications, (c) registered copyrights, and (d) domain name registrations, in each case that constitute Owned Intellectual Property as of the date of this Agreement (“Company Registered Intellectual Property”), in each case, listing, as may be applicable, the filing/application/registration number, title, registrar, jurisdiction, date of filing/issuance and current applicant(s)/registered owners(s). Each item of the foregoing Company Registered Intellectual Property is subsisting, and has not been cancelled or abandoned. To the knowledge of the VS Companies, all Company Registered Intellectual Property is valid and enforceable. No action is pending, or to the VS Companies’ knowledge is threatened, challenging the validity, enforceability, registration, ownership or scope of any Owned Intellectual Property.

(b) One or more of the VS Companies exclusively own all Owned Intellectual Property free and clear of all Liens (other than Permitted Liens). All former and current officers, directors, employees, consultants, agents, and independent contractors of the VS Companies who have contributed to or participated in the conception and development of material Intellectual Property for any of the VS Companies have entered into valid and binding proprietary rights agreements with the relevant VS Company vesting ownership of such Intellectual Property in such VS Company, except where such ownership of such Intellectual Property is vested in the applicable VS Company by operation of law. The VS Companies have taken commercially reasonable steps to maintain the confidentiality of all trade secrets material to their business in accordance with industry practice. To the VS Companies’ knowledge, there has been no unauthorized access, use or disclosure of any material trade secrets or other material confidential Proprietary Information of the VS Companies.

(c) (i) The operation of the VS Companies’ business has not, since December 31, 2018, infringed, misappropriated, diluted or otherwise violated, and is not infringing, misappropriating, diluting or otherwise violating the Intellectual Property rights of any Person and (ii) no Person (including any current or former employee or consultant of the VS Companies) has, since December 31, 2018, infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating any Owned Intellectual Property, in each case, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. No Action is pending or, to the VS Companies’ knowledge, threatened against the VS Companies or made by the VS Companies against a third party, alleging any infringement, misappropriation, dilution or other violation of any Intellectual Property rights, except as has not been, and would not reasonably be expected to be, individually or in the aggregate, materially adverse to the VS Companies.

(d) The IT Systems are sufficient in all material respects for the current operations of the VS Companies and have not materially malfunctioned or failed since December 31, 2018. The VS Companies have implemented and maintain commercially reasonable measures designed to protect the integrity and security of the IT Systems, as well as commercially reasonable data backup, system redundancy and disaster avoidance and

recovery procedures. To the knowledge of the VS Companies, there has been, since December 31, 2018, no breach of the IT Systems resulting in the unauthorized access, use, disclosure, modification, destruction or encryption of any material Personal Data or material Proprietary Information contained therein.

(e) None of the VS Companies have (i) incorporated any Open Source Software into, or combined Open Source Software with, any software included in the Owned Intellectual Property, or (ii) distributed Open Source Software in conjunction with any software included in the Owned Intellectual Property, in each case, in a manner which requires, as a condition of such incorporation, combination or distribution, that the Owned Intellectual Property be (x) disclosed or distributed in source code, object code or binary form, (y) licensed for the purpose of making derivative works, or (z) redistributable at no charge. Except as would not reasonably be expected to be, individually or in the aggregate, materially adverse to the VS Companies, no source code of any software included in the Owned Intellectual Property has been disclosed, licensed, escrowed or delivered to any Person, including an escrow agent, and no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or the occurrence of any condition) would reasonably be expected to result in a requirement that the source code of any software included in the Owned Intellectual Property be disclosed or delivered to any Person.

(f) The VS Companies are, and since December 31, 2018, have been, in material compliance with all Privacy Laws and all Privacy Agreements. To the knowledge of the VS Companies, no material complaint relating to an improper use or disclosure of, or a breach in the security of, any Personal Data is pending, or since December 31, 2018 has been made, against the VS Companies. To the knowledge of the VS Companies, there is no pending claim, audit or investigation against the VS Companies alleging that any processing of Personal Data by the VS Companies: (i) is in violation of any applicable Privacy Laws, or (ii) is in violation of any Privacy Agreements.

Section 3.19 Absence of Changes. Since the date of the most recent balance sheet included in the Financial Statements, (a) there has not been any Company Material Adverse Effect and (b) except as set forth in Section 3.19 of the VS Disclosure Letter, the VS Companies have, in all material respects, conducted their business and operated their properties in the ordinary course of business. Since the date of the most recent balance sheet included in the Financial Statements, the VS Companies and their Subsidiaries have not taken any action or omitted to take any action, which, if taken or omitted to be taken after the date of this Agreement, would require the consent of Horizon in accordance with Section 5.1.

Section 3.20 Anti-Corruption Compliance; Sanctions; PATRIOT ACT.

(a) For the past three (3) years, none of the VS Companies, nor, to the knowledge of the VS Companies, any director, officer, employee, member, equityholder, manager, representative or agent acting on behalf of any VS Company, has, directly or indirectly (i) made or attempted to make or promised to pay, any contribution, gift, bribe, rebate, payoff, influence payment or kickback or promised to give or authorized such a promise or gift, of any money or anything of value or other payment, to (A) any official or employee of a Governmental Authority, any political party or official thereof, or any candidate for political office or (B) any other Person, in any such case while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official or employee of a Governmental Authority or candidate for political office for the purpose of influencing any official act or decision of such official or inducing him, her or it to use his, her or its influence: (1) to obtain favorable treatment for business or contracts secured, (2) to pay for favorable treatment for business or contracts secured, (3) to obtain special concessions or for special concessions already obtained or (4) in violation of any requirement of applicable Anti-Bribery Laws in each jurisdiction where the VS Company is conducting or has conducted business, or (ii) established or maintained any unlawful fund or asset that has not been recorded in the VS Company's books and records, except, in each case, to the extent any payments or failure to so record would not have, individually or in the aggregate, a Company Material Adverse Effect.

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(b) Each of the VS Companies, have instituted and maintain policies and procedures reasonably designed to ensure compliance in all material respects with the Anti-Bribery Laws.

(c) To the knowledge of the VS Companies, as of the date hereof, there are no current or pending internal investigations, third party investigations (including by any Governmental Authority), or internal or external audits that address any material allegations or information concerning possible material violations of the Anti-Bribery Laws related to any VS Company.

(d) None of the VS Companies nor, to the knowledge of the VS Companies, any director, officer, employee, agent, Affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by, any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, Her Majesty's Treasury's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(e) To the extent applicable, the VS Companies are in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or Governmental Order relating thereto and (ii) the PATRIOT Act.

Section 3.21 Insurance. Each VS Company currently maintains, and has for the past three (3) years maintained insurance required by Law or any Contract to which any of them is party or by which any of them is bound. The VS Companies have in full force and effect all material policies or binders of property, fire and casualty, product liability, workers' compensation, and other forms of insurance held by, or for the benefit of the VS Companies. All such insurance policies are in full force and effect, all premiums due have been paid in full, no VS Company is in default with respect to its payment obligations under any such policies, and no notice of cancellation or termination has been received by any VS Company with respect to any such policy. No VS Company nor any of its Subsidiaries has any self-insurance or co-insurance programs. No insurer has denied or disputed coverage of any material claim under an insurance policy during the last twelve (12) months.

### Section 3.22 Subscription-Related Representations.

(a) Topco understands that the shares of Class B Common Stock are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that such shares have not been registered under the Securities Act. Topco understands that the shares of Class B Common Stock may not be resold, transferred, pledged or otherwise disposed of by Topco absent an effective registration statement under the Securities Act except (i) to the Surviving Corporation or a Subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any certificates or book entry account representing such shares shall contain a legend to such effect.

(b) Topco acknowledges and agrees that Topco has received such information and has had the full opportunity to ask such questions and receive such answers concerning an investment in the shares of Class B Common Stock as Topco and Topco's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to such shares.

(c) Topco has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Class B Common Stock, and Topco has sought such accounting, legal and tax advice as Topco has considered necessary to make an informed investment decision.

Section 3.23 Information Supplied. None of the information supplied or to be supplied by any VS Entity or any of the VS Entities' Subsidiaries specifically for inclusion in the Proxy Statement/Registration Statement will, at the date on which the Proxy Statement/Registration Statement is first mailed to the Horizon Stockholders or at the time of the Horizon Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing, the VS Entities make no representation, warranty or covenant with respect to (a) statements made or incorporated by reference therein based on information supplied by Horizon for inclusion or incorporation by reference in the Proxy Statement/Registration Statement or (b) any projections or forecasts included in the Proxy Statement/Registration Statement.

Section 3.24 Brokers' Fees. Except as set forth on Section 3.24 of the VS Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions based upon arrangements made by any VS Entity, any of their Subsidiaries' or any of their Affiliates for which Horizon, any VS Entity or any of the VS Entities' Subsidiaries has any obligation.

Section 3.25 No Outside Reliance. Notwithstanding anything contained in this Article III or any other provision hereof, each of the VS Entities, and any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives, acknowledge and agree that the VS Entities has made its own investigation of Horizon and that neither Horizon nor any of its Affiliates, agents or representatives is making any representation or warranty whatsoever, express or implied, beyond those expressly given by Horizon in Article IV, including any implied warranty or representation as to condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of Horizon or its Subsidiaries. Without limiting the generality of the foregoing, it is understood that any management presentations that have been or shall hereafter be provided to the VS Entities or any of their Affiliates, agents or representatives are not and will not be deemed to be representations or warranties of Horizon, and no representation or warranty is made as to the accuracy or completeness of any of the foregoing except as may be expressly set forth in Article IV of this Agreement. Except as otherwise expressly set forth in this Agreement, each of the VS Entities understands and agrees that any assets, properties and business of Horizon and its Subsidiaries are furnished "as is", "where is" and subject to and except as otherwise provided in the representations and warranties contained in Article IV, with all faults and without any other representation or warranty of any nature whatsoever.

Section 3.26 Indebtedness; Cash; Transaction Expenses. Section 3.26(a) of the VS Disclosure Letter lists each item of Indebtedness, including in each case, the amount and holder of such Indebtedness, of the VS Entities or their Subsidiaries that is outstanding as of April 20, 2021. Section 3.26(b) of the VS Disclosure Letter attached hereto lists the aggregate amount of cash and cash equivalents held by the VS Entities and their Subsidiaries as of the date hereof. Section 3.26(c) of the VS Disclosure Letter lists each expected payee of VS Transaction Expenses as of the Closing, together with an estimate of the amount of such expenses.

Section 3.27 No Additional Representation or Warranties. Except as provided in this Article III, neither the VS Entities nor any of their Affiliates, nor any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives has made, or is making, any express or implied representation or warranty whatsoever to Horizon or its Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to Horizon or its Affiliates. Without limiting the foregoing, the VS Entities acknowledge that the VS Entities, together with their respective advisors, have made their own investigation of Horizon and its Subsidiaries and, except as provided in Article IV, is not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of Horizon or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of Horizon and its Subsidiaries as conducted after the Closing, as contained in any materials provided by Horizon or any of its Affiliates or any of their respective directors, officers, employees, stockholders, partners, members or representatives or otherwise.



## ARTICLE IV

### **REPRESENTATIONS AND WARRANTIES OF HORIZON**

Except as set forth in (i) any Horizon SEC Filings filed or submitted on or prior to the date hereof (excluding (a) any disclosures in any risk factors section that do not constitute statements of fact, disclosures in any forward-looking statements disclaimer and other disclosures that are generally cautionary, predictive or forward-looking in nature and (b) any exhibits or other documents appended thereto) (it being acknowledged that nothing disclosed in such Horizon SEC Filings will be deemed to modify or qualify the representations and warranties set forth in [Section 4.9](#) and [Section 4.11](#)), or (ii) in the disclosure letter delivered by Horizon to the VS Entities (the “[Horizon Disclosure Letter](#)”) on the date of this Agreement (each section of which, subject to [Section 10.9](#), qualifies the correspondingly numbered and lettered representations in this [Article IV](#)), Horizon represents and warrants to the VS Entities as follows:

Section 4.1 [Company Organization](#). Horizon has been duly incorporated, organized or formed and is validly existing as a corporation and in good standing or exempted company in good standing (or equivalent status, to the extent that such concept exists) under the Laws of its jurisdiction of incorporation, and has the requisite corporate power and authority to own, lease or operate all of its properties and assets and to conduct its business as it is now being conducted. Horizon is duly licensed or qualified and in good standing as a foreign corporation or company in all jurisdictions in which its ownership of property or the conduct of business as now conducted requires it to be so licensed or qualified, except where failure to be so licensed or qualified has not had, and would not reasonably be expected to have, individually or in the aggregate, a Horizon Material Adverse Effect. True and complete copies of the Governing Documents of Horizon have been made available to the VS Entities prior to the date of this Agreement.

Section 4.2 [Due Authorization](#).

(a) Horizon has all requisite corporate power and authority to (a) execute, deliver and perform under this Agreement and the other documents to which it is or will be a party contemplated hereby and (b) consummate the Transactions and perform all obligations to be performed by it hereunder and thereunder, subject to obtaining the Horizon Stockholder Approval. The execution, delivery and performance of this Agreement and the other documents to which it is or will be a party contemplated hereby and the consummation of the Transactions and thereby have been (i) duly and validly authorized and approved by the Board of Directors of Horizon and (ii) determined by the Board of Directors of Horizon as advisable to Horizon and the Horizon Stockholders and recommended for approval by the Horizon Stockholders. No other company proceeding on the part of Horizon is or will be necessary to authorize this Agreement and the other documents to which it is or will be a party contemplated hereby (other than the Horizon Stockholder Approval). This Agreement has been, and at or prior to the Closing, the other documents to which it is or will be a party contemplated hereby will be, duly and validly executed and delivered by Horizon, and this Agreement constitutes, and at or prior to the Closing, the other documents to which it is or will be a party contemplated hereby will constitute, a legal, valid and binding obligation of Horizon, enforceable against Horizon in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity.

(b) Assuming that a quorum (as determined pursuant to the Horizon Governing Documents) is present, (i) the Transaction Proposal identified in clause (A) of [Section 7.2\(b\)](#), shall require an affirmative vote of the holders of at least two-thirds of the outstanding Horizon Common Stock entitled to vote, who attend and vote thereupon (as determined in accordance with applicable Law and the Horizon Governing Documents) at a Horizon Stockholders’ Meeting duly called by the Board of Directors of Horizon and held for such purpose, and (ii) the Transaction Proposals identified in clauses (B)—(G) of [Section 7.2\(b\)](#), in each case, shall require approval by an affirmative vote of the holders of at least a majority of the outstanding Horizon Common Stock (prior to the Effective Time) entitled to vote, who attend and vote thereupon (as determined in accordance with



the Horizon Governing Documents) at a Horizon Stockholders' Meeting duly called by the Board of Directors of Horizon and held for such purpose.

(c) The foregoing vote is the only votes of any of Horizon's share capital necessary in connection with entry into this Agreement by Horizon and the consummation of the Transactions, including the Closing.

(d) At a meeting duly called and held, the Board of Directors of Horizon has unanimously approved the Transactions as a Business Combination.

Section 4.3 No Violation. Subject to the receipt of the consents, approvals, authorizations and other requirements set forth in Section 4.4 and to receipt of the Horizon Stockholder Approval, the execution, delivery and performance by Horizon of this Agreement and the documents to which it is or will be a party contemplated hereby and the consummation of the Transactions do not and will not (a) violate any provision of, or result in the breach of or default under (in each case, with or without notice or lapse of time, or both) the Governing Documents of Horizon, (b) violate any provision of, or result in the breach of, or default under (in each case, with or without notice or lapse of time, or both) any Law or Governmental Order applicable to Horizon or any of its Subsidiaries, (c) violate any provision of, or result in (in each case, with or without notice or lapse of time, or both) the breach of, result in the loss of any right or benefit (including any forfeiture or reduction in carried interest), require any consent, waiver, approval, authorization, notice or other action by any Person (other than Horizon or its Subsidiaries), or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under any Contract or Governmental Permit to which Horizon or any of its Subsidiaries is a party or by which Horizon or any of its Subsidiaries may be bound, or terminate or result in the termination of any such Contract or Governmental Permit or (d) result in the creation of any Lien upon any of the properties or assets of Horizon or any of its Subsidiaries, except, in the case of clauses (b) through (d), to the extent that the occurrence of the foregoing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Horizon Material Adverse Effect.

Section 4.4 Governmental Authorizations. Assuming the truth and completeness of the representations and warranties of the VS Entities contained in this Agreement, no Governmental Authorization is required on the part of Horizon or any of its Subsidiaries with respect to Horizon's execution, delivery or performance of this Agreement or the Ancillary Agreements or the consummation by Horizon of the Transactions, except for (i) any consents, approvals, authorizations, designations, declarations, waivers, notices or filings, the absence of which would not, individually or in the aggregate, reasonably be expected to have (A) a Horizon Material Adverse Effect or (B) a material adverse effect on the ability of Horizon or its Subsidiaries to perform or comply with on a timely basis any material obligation of Horizon or its Subsidiaries under this Agreement or the Ancillary Agreements or to consummate the Transactions, (ii) any consents, approvals, authorizations, designations, declarations, waivers or filings related to the SEC, NASDAQ or the NYSE or in connection with the Plan of Merger or Merger Certificate and (iii) the Regulatory Approvals.

#### Section 4.5 Capitalization of Horizon.

(a) As of the date hereof, the authorized share capital of Horizon is 441,000.00 divided into (i) 400,000,000 shares of Horizon Class A Common Stock, of which 54,398,433 shares are issued and outstanding as of the date of this Agreement, (ii) 40,000,000 shares of Horizon Class B Common Stock, of which 13,599,608 shares are issued and outstanding as of the date of this Agreement, and (iii) 1,000,000 preference shares of par value \$0.0001 each, of which no shares are issued and outstanding as of the date of this Agreement ((i), (ii) and (iii) collectively, the "Horizon Securities"). The foregoing represent all of the issued and outstanding Horizon Securities. All issued and outstanding Horizon Securities (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in (1) the Horizon Governing Documents and (2) any other applicable Contracts governing the issuance of such securities; and (iii) are not

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subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Horizon Governing Documents or any Contract to which Horizon is a party or otherwise bound; and (iv) are free and clear of any Liens other than Permitted Liens.

(b) At least one day prior to the Merger, Sponsor and Horizon shall consummate the Sponsor Exchange.

(c) Subject to the terms of conditions of the relevant Warrant Agreement, the Horizon Warrants will be exercisable after giving effect to the Transactions for one share of Horizon Common Stock at an exercise price of eleven Dollars and fifty cents (\$11.50) per share. As of the date hereof, 18,132,789 Horizon Common Warrants, 6,519,791 Horizon Private Placement Warrants, no Horizon \$10.00 Exercise Warrants and no Horizon \$15.00 Exercise Warrants are issued and outstanding. No Horizon Warrants are exercisable until thirty (30) days after the Closing. All outstanding Horizon Common Warrants and Horizon Private Placement Warrants (i) have been duly authorized and validly issued and constitute valid and binding obligations of Horizon, enforceable against Horizon in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity; (ii) have been offered, sold and issued in compliance with applicable Law and all requirements set forth in the Horizon Governing Documents; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Horizon Governing Documents or any Contract to which Horizon is a party or otherwise bound. All of the Horizon \$10.00 Exercise Warrants and Horizon \$15.00 Exercise Warrants will, when issued pursuant to the Exchange Agreement, (i) be duly authorized and validly issued and constitute valid and binding obligations of Horizon, enforceable against Horizon in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity; (ii) have been offered, sold and issued in compliance with applicable Law and all requirements set forth in the Horizon Governing Documents; and (iii) not be subject to, nor will they have been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law, the Horizon Governing Documents or any Contract to which Horizon is a party or otherwise bound. Except for the Horizon Governing Documents and this Agreement, there are no outstanding Contracts of Horizon to repurchase, redeem or otherwise acquire any Horizon Securities.

(d) Except as set forth in this [Section 4.5](#) of the Horizon Disclosure Letter, Horizon has not granted any outstanding subscriptions, options, stock appreciation rights, "phantom stock", warrants, commitments, calls, rights of first refusal, deferred compensation rights, rights or other securities (including debt securities or voting securities) convertible into or exchangeable or exercisable for Horizon Securities, any other commitments, calls, conversion rights, rights of exchange of privilege (whether pre-emptive, contractual or by matter of Law), plans or other arrangements or commitments of any character providing for the issuance of additional shares or any other equity securities of Horizon the sale of treasury shares or other equity interests of Horizon or the value of which is determined by reference to the Horizon Securities, and there are no voting trusts, proxies or agreements of any kind which may obligate Horizon to issue, purchase, register for sale, redeem or otherwise acquire any Horizon Securities.

(e) The Horizon Common Stock is duly authorized and validly issued, fully paid and non-assessable and issued in compliance with applicable Law and not subject to, and not issued in violation of, any Lien, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of applicable Law or the Horizon Governing Documents.

(f) Horizon has no Subsidiaries and does not own, directly or indirectly, any equity interests or other interests or investments (whether equity or debt) in any Person, whether incorporated or unincorporated. Horizon

is not party to any Contract that obligates Horizon to invest money in, loan money to or make any capital contribution to any other Person.

Section 4.6 Internal Controls; Listing; Financial Statements.

(a) Except as not required in reliance on exemptions from various reporting requirements by virtue of Horizon's status as an "emerging growth company" within the meaning of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), Horizon has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to Horizon, including its consolidated Subsidiaries, if any, is made known to Horizon's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Horizon's principal executive officer and principal financial officer to material information required to be included in Horizon's periodic reports required under the Exchange Act. Since June 20, 2020, Horizon has established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of Horizon's financial reporting and the preparation of Horizon's financial statements for external purposes in accordance with GAAP.

(b) Each director and executive officer of Horizon has filed with the SEC on a timely basis all statements required by Section 16(a) of the Exchange Act and the rules and regulations promulgated thereunder. Horizon has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(c) Except as set forth in Section 4.6(c) of the Horizon Disclosure Letter, since June 20, 2020, Horizon has complied in all material respects with the applicable listing and corporate governance rules and regulations of the NYSE. The Horizon Class A Common Stock (prior to the Effective Time) is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the NYSE. Except as set forth in Section 4.6(c) of the Horizon Disclosure Letter, there is no Legal Proceeding pending or, to the knowledge of Horizon, threatened against Horizon by the NYSE or the SEC with respect to any intention by such entity to deregister the Horizon Common Stock (prior to the Effective Time) or prohibit or terminate the listing of Horizon Common Stock (prior to the Effective Time) on the NYSE.

(d) The Horizon SEC Filings contain true and complete copies of the audited balance sheet as of December 31, 2019, and statement of operations, cash flow and stockholders' equity of Horizon for the year ended December 31, 2019, together with the auditor's reports thereon (the "Horizon Financial Statements"). Except as disclosed in the Horizon SEC Filings, the Horizon Financial Statements present (i) fairly present in all material respects the financial position of Horizon, as at the respective dates thereof, and the results of operations and consolidated cash flows for the respective periods then ended, (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), and (iii) comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof. Each of the VS Entities acknowledges that (i) the Staff of the SEC issued the Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies on April 12, 2021 (the "Statement"), (ii) Horizon continues to review the Statement and its implications, including on the financial statements and other information included in the Horizon SEC Filings and (iii) any restatement, revision or other modification of the Horizon SEC Filings in connection with such review of the Statement or any subsequent related agreements or other guidance from the Staff of the SEC shall be deemed not material for purposes of this Agreement, including for purposes of this Section 4.6(d) and Section 4.10 below. The books and records of Horizon have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements.

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(e) There are no outstanding loans or other extensions of credit made by Horizon to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of Horizon. Horizon has not taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(f) Neither Horizon (including any employee thereof) nor Horizon's independent auditors has identified or been made aware of (i) any significant deficiency or material weakness in the system of internal accounting controls utilized by Horizon, (ii) any fraud, whether or not material, that involves Horizon's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by Horizon or (iii) any claim or allegation regarding any of the foregoing.

Section 4.7 No Undisclosed Liabilities. Except as set forth on Section 4.7 of the Horizon Disclosure Letter, as of the date of this Agreement, there is no liability, debt (including Indebtedness) or obligation of, or claim or judgment of any kind, against, Horizon or any of its Subsidiaries (whether direct or indirect, absolute or contingent, accrued or unaccrued, known or unknown, liquidated or unliquidated, due or to become due or otherwise) that would be required to be set forth on a balance sheet of Horizon or any of its Subsidiaries prepared in accordance with GAAP, except for liabilities, debts, obligations, claims or judgments (a) reflected or reserved for on the Financial Statements or disclosed in the notes thereto included in Horizon SEC Filings, (b) that have arisen since the date of the most recent balance sheet included in the Horizon SEC Filings in the ordinary course of business (none of which relates to breach of contract, breach of warranty, tort, infringement, any lawsuit, a violation of law), (c) that will be discharged or paid off prior to or at the Closing, (d) arising under this Agreement and/or the performance by Horizon of its obligations hereunder, or (e) that would not, reasonably be expected to, individually or in the aggregate, result in material liability to the Horizon Entities, taken as a whole.

Section 4.8 Litigation and Proceedings. Except as set forth on Section 4.8 of the Horizon Disclosure Letter, as of the date of this Agreement, (a) there are no pending or, to the knowledge of Horizon, threatened Legal Proceedings against or by Horizon or its properties, assets or business; (b) no investigations, audits or other inquiries are pending or, to the knowledge of Horizon, threatened by any Governmental Authority, against Horizon or its properties, assets or business; and (c) there is no outstanding Governmental Order imposed upon any Horizon, nor are any properties or assets of Horizon bound by or subject to any Governmental Order, except in the case of each of clauses (a) – (c), as would not reasonably be expected to, individually or in the aggregate, be materially adverse to the Horizon Entities, taken as a whole.

### Section 4.9 Taxes.

(a) All income and other material Tax Returns required by Law to be filed by Horizon or its Subsidiaries have been timely filed, and all such Tax Returns are true, complete and accurate in all material respects.

(b) All income and other material Taxes due and owing by Horizon or its Subsidiaries (whether or not reflected on any Tax Return) have been duly and timely paid in full.

(c) Horizon and its Subsidiaries have (i) timely withheld and remitted to the appropriate Governmental Authority all material amounts required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, other service provider, equity interest holder or other third-party, and (ii) complied in all material respects with all applicable Laws relating to the collection, withholding, and remittance of Taxes.

(d) Neither Horizon nor any of its Subsidiaries is currently the subject of or otherwise engaged in any material Tax audit, examination, investigation, or other proceeding (judicial or administrative) with a Governmental Authority, nor has Horizon or any of its Subsidiaries received written notice from any Governmental Authority indicating that any such Tax audit, examination, investigation, or other proceeding is forthcoming.

(e) Neither Horizon nor any of its Subsidiaries has received any written claimed, proposed, asserted, or threatened deficiency, assessment, or adjustment with respect to a material amount of Taxes that has not been resolved in full. Neither Horizon nor any of its Subsidiaries has waived or extended the statute of limitations with respect to any assessment or potential assessment or collection or proposed collection of a material amount of Taxes which waiver or extension is still in effect, nor is any request from any Governmental Authority for any such waiver or extension outstanding. There are no Liens with respect to material Taxes on any of the assets of Horizon or its Subsidiaries, other than Permitted Liens.

(f) Neither Horizon nor any of its Subsidiaries has taken any action (or permitted any action to be taken), nor is aware of any fact or circumstance, that could reasonably be expected to prevent or impede the Merger from qualifying as a “reorganization” within the meaning of Section 368(a)(1)(F) of the Code.

Section 4.10 SEC Filings. Horizon has timely filed or furnished all statements, prospectuses, registration statements, forms, reports and documents required to be filed by it with the SEC since August 20, 2020, pursuant to the Exchange Act or the Securities Act (collectively, as they have been amended since the time of their filing through the date hereof, the “Horizon SEC Filings”). Each of the Horizon SEC Filings, as of the respective date of its filing, and as of the date of any amendment, complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act and any rules and regulations promulgated thereunder applicable to the Horizon SEC Filings. As of the respective date of its filing (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then on the date of such filing), the Horizon SEC Filings did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Horizon SEC Filings. To the knowledge of Horizon, none of the Horizon SEC Filings filed on or prior to the date hereof is subject to ongoing SEC review or investigation as of the date hereof.

Section 4.11 Trust Account. As of the date of this Agreement, Horizon has at least \$543,984,330.00 in the Trust Account (including, if applicable, an aggregate of approximately \$13,600,000.00 of deferred underwriting commissions and other fees being held in the Trust Account), such monies invested in United States government securities or money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act pursuant to the Investment Management Trust Agreement, dated as of August 25, 2020, between Horizon and Continental Stock Transfer & Trust Company, as trustee (the “Trustee”) (the “Trust Agreement”). There are no separate Contracts, side letters or other arrangements or understandings (whether written or unwritten, express or implied) that would cause the description of the Trust Agreement in the Horizon SEC Filings to be inaccurate in any material respect or that would entitle any Person (other than stockholders of Horizon holding Horizon Common Stock (prior to the Effective Time) sold in Horizon’s initial public offering who shall have elected to redeem their shares of Horizon Common Stock (prior to the Effective Time) pursuant to the Horizon Governing Documents and the underwriters of Horizon’s initial public offering with respect to deferred underwriting commissions) to any portion of the proceeds in the Trust Account. Prior to the Closing, none of the funds held in the Trust Account may be released other than to pay Taxes and payments with respect to all Horizon Share Redemptions. There are no proceedings pending or, to the knowledge of Horizon, threatened with respect to the Trust Account. Horizon has performed all material obligations required to be performed by it to date under, and is not in default, breach or delinquent in performance or any other respect (claimed or actual) in connection with, the Trust Agreement, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default or breach thereunder. As of the Closing, the obligations of Horizon to dissolve or liquidate pursuant to the Horizon Governing Documents shall terminate, and as of the Closing, Horizon shall have no obligation whatsoever pursuant to the Horizon Governing Documents to dissolve and liquidate the assets of Horizon by reason of the consummation of the Transactions. To Horizon’s knowledge, as of the date hereof, following the Closing, no Horizon Stockholder shall be entitled to receive any amount from the Trust Account except to the extent such Horizon Stockholder is exercising a Horizon Share Redemption. As of the date hereof, assuming the accuracy of the representations and warranties of the VS Entities contained

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herein and the compliance by the VS Entities with their respective obligations hereunder, Horizon has no reason to believe that any of the conditions to the use of funds in the Trust Account will not be satisfied or funds available in the Trust Account will not be available to Horizon on the Closing Date.

Section 4.12 Investment Company Act; JOBS Act. Horizon is not an “investment company” or a Person directly or indirectly “controlled” by or acting on behalf of an “investment company”, in each case within the meaning of the Investment Company Act. Horizon constitutes an “emerging growth company” within the meaning of the JOBS Act.

Section 4.13 Absence of Changes. Since June 20, 2020, (a) there has not been any Horizon Material Adverse Effect and (b) except as set forth in Section 4.13 of the Horizon Disclosure Letter, Horizon has, in all material respects, conducted its business and operated its properties in the ordinary course of business consistent with past practice.

Section 4.14 Indebtedness; Transaction Expenses. Horizon does not have any Indebtedness. Section 4.14 of the Horizon Disclosure Letter lists each expected payee of Horizon Transaction Expenses as of the Closing, together with an estimate of the amount of such expenses.

Section 4.15 Business Activities.

(a) Since its organization, Horizon has not conducted any business activities other than activities related to Horizon’s initial public offering or directed toward the accomplishment of a Business Combination. Except as set forth in the Horizon Governing Documents or as otherwise contemplated by this Agreement or the Ancillary Agreements and the Transactions, there is no Contract to which Horizon is a party which has or would reasonably be expected to have the effect of prohibiting or impairing any business practice of Horizon or any acquisition of property by Horizon or the conduct of business by Horizon as currently conducted or as contemplated to be conducted as of the Closing, other than such effects which have not had, and would not reasonably be expected, individually or in the aggregate, to interfere with, prevent or materially delay the ability of Horizon to enter into and perform their obligations under this Agreement.

(b) Except for the transactions contemplated by this Agreement and the Ancillary Agreements, Horizon does not own or have a right to acquire, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, business, trust or other entity.

(c) As of the date hereof and except for this Agreement and as set forth on Section 4.15(c) of the Horizon Disclosure Letter, the Ancillary Agreements and Transactions (including with respect to Horizon Transaction Expenses), Horizon is not party to any Contract with any other Person that would require payments by Horizon or any of its Subsidiaries after the date hereof in excess of \$75,000 in the aggregate with respect to any individual Contract.

Section 4.16 NYSE Stock Market Quotation. Horizon Class A Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the NYSE under the symbol “HZAC”. The Horizon Common Warrants are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the NYSE under the symbol “HZAC WS”. Except as set forth on Section 4.16 of the Horizon Disclosure Letter, Horizon is in compliance with the rules of the NYSE and there is no Action or proceeding pending or, to the knowledge of Horizon, threatened against Horizon by the NYSE or the SEC with respect to any intention by such entity to deregister the Horizon Common Stock or Horizon Common Warrants or terminate the listing of Horizon Common Stock or Horizon Common Warrants on the NYSE. Neither Horizon nor any of its Affiliates has taken any action in an attempt to terminate the registration of the Horizon Common Stock or Horizon Common Warrants under the Exchange Act except as contemplated by this Agreement.

Section 4.17 Registration Statement, Proxy Statement and Proxy Statement/Registration Statement. On the effective date of the Registration Statement, the Registration Statement, and when first filed in accordance with

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Rule 424(b) under the Securities Act and/or filed pursuant to Section 14(a) of the Exchange Act, the Proxy Statement and the Proxy Statement/Registration Statement (or any amendment or supplement thereto), will comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act. On the effective date of the Registration Statement, the Registration Statement will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. On the date of any filing pursuant to Rule 424(b) under the Securities Act and/or Section 14(a) of the Exchange Act, the date the Proxy Statement/Registration Statement and the Proxy Statement, as applicable, is first mailed to the Horizon Stockholders, and at the time of the Horizon Stockholders' Meeting, the Proxy Statement/Registration Statement and the Proxy Statement, as applicable (together with any amendments or supplements thereto), will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing, Horizon makes no representation, warranty or covenant with respect to (a) statements made or incorporated by reference therein based on information supplied by the VS Entities for inclusion or incorporation by reference in the Proxy Statement/Registration Statement or (b) any projections or forecasts included in the Proxy Statement/Registration Statement.

Section 4.18 Takeover Statutes and Charter Provisions. The Board of Directors of Horizon has taken all action necessary so that the restrictions on a "business combination" (as such term is used in Section 203 of the DGCL) contained in Section 203 of the DGCL or any similar restrictions under any foreign Laws will be inapplicable to this Agreement and the Transactions. As of the date of this Agreement, no "fair price," "moratorium," "control share acquisition" or other antitakeover statute or similar domestic or foreign Law applies with respect to Horizon or any of its Subsidiaries in connection with this Agreement or the Transactions. As of the date of this Agreement, there is no stockholder rights plan, "poison pill" or similar antitakeover agreement or plan in effect to which Horizon or any of its Subsidiaries is subject, party or otherwise bound.

Section 4.19 Brokers' Fees. Except fees described on Section 4.19 of the Horizon Disclosure Letter, no broker, finder, investment banker or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions based upon arrangements made by Horizon or any of its Affiliates or for which the VS Entities may become liable.

Section 4.20 No Outside Reliance. Notwithstanding anything contained in this Article IV or any other provision hereof, each of Horizon, and any of their respective directors, managers, officers, employees, equityholders, partners, members or representatives, acknowledge and agree that Horizon has made its own investigation of the VS Entities and that neither the VS Entities nor any of their Affiliates, agents or representatives is making any representation or warranty whatsoever, express or implied, beyond those expressly given by the VS Entities in Article III, including any implied warranty or representation as to condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the VS Entities or their Subsidiaries. Without limiting the generality of the foregoing, it is understood that any cost estimates, financial or other projections or other predictions that may be contained or referred to in the VS Disclosure Letter or elsewhere, as well as any information, documents or other materials (including any such materials contained in any "data room" (whether or not accessed by Horizon or its representatives) or reviewed by Horizon pursuant to the Confidentiality Agreement) or management presentations that have been or shall hereafter be provided to Horizon or any of its Affiliates, agents or representatives are not and will not be deemed to be representations or warranties of the VS Entities, and no representation or warranty is made as to the accuracy or completeness of any of the foregoing except as may be expressly set forth in Article III of this Agreement. Except as otherwise expressly set forth in this Agreement, Horizon understands and agrees that any assets, properties and business of the VS Entities and their Subsidiaries are furnished "as is", "where is" and subject to and except as otherwise provided in the representations and warranties contained in Article III, with all faults and without any other representation or warranty of any nature whatsoever.

Section 4.21 No Additional Representation or Warranties. Except as provided in this Article IV, neither Horizon nor any of its Affiliates, nor any of their respective directors, managers, officers, employees, stockholders,



partners, members or representatives has made, or is making, any express or implied representation or warranty whatsoever to the VS Entities or their Affiliates and no such party shall be liable in respect of the accuracy or completeness of any information provided to the VS Entities or their Affiliates. Without limiting the foregoing, Horizon acknowledges that Horizon, together with its advisors, has made its own investigation of the VS Entities and their respective Subsidiaries and, except as provided in [Article III](#), is not relying on any representation or warranty whatsoever as to the condition, merchantability, suitability or fitness for a particular purpose or trade as to any of the assets of the VS Entities or any of their respective Subsidiaries, the prospects (financial or otherwise) or the viability or likelihood of success of the business of the VS Entities and their respective Subsidiaries as conducted after the Closing, as contained in any materials provided by Horizon or any of its Affiliates or any of their respective directors, officers, employees, stockholders, partners, members or representatives or otherwise.

## ARTICLE V

### COVENANTS OF THE VS ENTITIES

Section 5.1 Conduct of Business. Except (i) as expressly contemplated or permitted by this Agreement (including the Pre-Closing Restructuring Plan) or the Ancillary Agreements, (ii) as required by applicable Law (including for this purpose any COVID-19 Measures), (iii) as set forth on [Section 5.1](#) of the VS Disclosure Letter or (iv) as consented to by Horizon in writing (which consent shall not be unreasonably conditioned, withheld or delayed), from the date of this Agreement through the earlier of the Closing or valid termination of this Agreement pursuant to [Article IX](#) (the “Interim Period”), each of the VS Entities shall, and shall cause their Subsidiaries to, use commercially reasonable efforts to operate the business of the VS Entities in the ordinary course. Without limiting the generality of the foregoing, except (A) as expressly contemplated or permitted by this Agreement (including the Pre-Closing Restructuring Plan) or the Ancillary Agreements, (B) as required by applicable Law (including for this purpose any COVID-19 Measures), (C) as set forth on [Section 5.1](#) of the VS Disclosure Letter or (D) as consented to by Horizon in writing (which consent shall not be unreasonably conditioned, withheld or delayed), Intermediate and VS Pubco shall not, and the VS Entities shall cause their Subsidiaries not to:

(a) change or amend the Governing Documents of any VS Company in any material respect, except as otherwise required by Law;

(b) make or declare any dividend or distribution to the stockholders or members, as applicable, of any VS Company or make any other distributions in respect of any of the VS Companies’ capital stock or equity interests, except for (i) Tax Distributions (as defined in the Current LLCA) permitted to be made under the Current LLCA but not in excess of \$10,000,000, and (ii) dividends and distributions by a VS Company to another VS Company;

(c) split, combine, reclassify, recapitalize or otherwise amend any terms of any shares or series of the VS Companies’ capital stock or equity interests, except for any such transaction by a VS Company that remains a VS Company after consummation of such transaction;

(d) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, membership interests or other equity interests of the VS Companies, except for (i) the acquisition by the VS Companies of any shares of capital stock, membership interests or other equity interests of the VS Companies (other than Intermediate) in connection with the forfeiture or cancellation of such interests and (ii) transactions between a VS Company and another VS Company;

(e) sell, assign, transfer, convey, lease, license, sublease, abandon, permit to lapse, mortgage, pledge, encumber or otherwise dispose of any material tangible or intangible assets or properties of the VS Companies except for (i) dispositions of obsolete or worthless equipment in the ordinary course of business and (ii) transactions among the VS Companies;



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(f) acquire any ownership interest in any real property;

(g) make an acquisition of (whether by merger, stock or asset purchase or otherwise), capital investment in, or any loan to (or series of acquisitions, capital investments or loans), any other Person;

(h) (i) make or change any material method of accounting for Tax purposes, (ii) make, change or revoke any material Tax election that is inconsistent with past practices (except as required by the Code or applicable law) if such Tax election is reasonably expected to materially increase any Tax liability of the VS Companies or any direct or indirect owner of Intermediate in a post-Closing Tax period, (iii) enter into any closing agreement relating to material Taxes (iv) settle, concede, compromise or abandon any material Tax claim or assessment, (v) surrender any right to claim a material refund of Taxes (vi) consent to any extension or waiver of the statute of limitations applicable to any material Tax claim or assessment, or (vii) file any amended income or other material Tax Return, except as required by applicable Law;

(i) (i) issue any additional VS Company interests or securities exercisable for or convertible into VS Company interests or (ii) grant any options, warrants or other equity-based awards that relate to the equity of any VS Company, in each case other than in the ordinary course of business or issuances to any other VS Company;

(j) adopt a plan of, or otherwise enter into or effect a, complete or partial liquidation, dissolution, restructuring, recapitalization, equity split, redemption, purchase of its or any of its Subsidiaries' equity interests or other reorganization of the VS Companies;

(k) commence, waive, release, settle, compromise or otherwise resolve any investigation, claim, Action, litigation or other Legal Proceedings, except in the ordinary course of business or where such waivers, releases, settlements or compromises involve only the payment of monetary damages (A) in an amount less than \$1,000,000 in the aggregate (excluding any amounts paid or payable by an insurance provider) or (B) that imposed any material non-monetary obligation on Horizon;

(l) make or commit to make capital expenditures (other than capital expenditures made in the ordinary course of business consistent with past practices) in excess of \$500,000, except for such capital expenditures included in the 2021 budget of the VS Companies previously made available to Horizon;

(m) incur, assume or guarantee any Indebtedness or guarantee any Indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of any VS Company or guaranty any debt securities of another Person, other than any Indebtedness for borrowed money or guarantee incurred in the ordinary course of business consistent with past practices and in an aggregate principal amount not to exceed \$5,000,000;

(n) (i) adopt, establish, enter into, terminate, modify or amend any Company Benefit Plan or any benefit or compensation plan, policy, program, agreement or arrangement that would be a Company Benefit Plan if in effect as of the date hereof, other than as required by applicable Law, (ii) other than as such actions may be taken pursuant to the terms of any Company Benefit Plan, accelerate the vesting or payment of any compensation or benefits under any Company Benefit Plan, or (iii) recognize any union or employee representative body for purposes of collective bargaining or negotiate or enter into any CBA, works council agreement or other similar Contract or understanding with any union, works council or other labor organization other than as required by applicable Law;

(o) (i) pay, announce, promise or grant any increase in the compensation or benefits payable to any current or former director, officer, employee or other individual service provider of any VS Company, other than increases in compensation of employees in the ordinary course consistent with past practice or otherwise pursuant to any existing agreement as of the date of this Agreement, or (ii) enter into any new employment agreement with any Person, or amend the annual base salary of any existing employment agreement with any current or former director, officer, employee or other individual service provider, whose annual base salary would exceed, or exceeded, \$300,000;

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- (p) implement or announce any employee layoffs, plant closings, reductions in force, furloughs, temporary layoffs, infectious disease emergency leave, salary or wage reductions, work schedule changes or other such actions that could reasonably be expected to trigger notice or other requirements under the WARN Act;
- (q) terminate (other than for “cause”) any director, officer, employee or other service provider of any VS Company whose annual base salary exceeds, or would exceed, \$300,000;
- (r) enter into any Related Party Transaction;
- (s) change an annual accounting period for GAAP or adopt or change any material accounting method used by it for GAAP or adopt any material accounting method unless required by GAAP; or
- (t) enter into any Contract to do any action prohibited under this Section 5.1.

Section 5.2 Inspection. Subject to confidentiality obligations that may be applicable to information furnished to the VS Entities, any VS Entity or any of the VS Entities’ Subsidiaries by third parties that may be in the VS Entities’ or any of their Subsidiaries’ possession from time to time, and except for any information that is subject to attorney-client privilege (provided that, to the extent possible, the parties shall cooperate in good faith to permit disclosure of such information in a manner that preserves such privilege or compliance with such confidentiality obligation), to the extent permitted by applicable Law, the VS Entities shall, and shall cause their Subsidiaries to, afford to Horizon and its accountants, counsel and other representatives reasonable access during the Interim Period (including for the purpose of coordinating transition planning for employees), during normal business hours and with reasonable advance notice, in such manner as to not materially interfere with the ordinary course of business of the VS Entities and their Subsidiaries, to all of their respective properties, books, Contracts, commitments, Tax Returns, records and appropriate officers and employees of the VS Entities and their Subsidiaries, and shall furnish such representatives with all financial and operating data and other information concerning the affairs of the VS Entities and their Subsidiaries that are in the possession of the VS Entities or their Subsidiaries as such representatives may reasonably request; provided, that such access shall not include any Phase II invasive or intrusive investigations, testing, sampling or analysis of any properties, facilities or equipment of the VS Entities or their Subsidiaries without the prior written consent of Topco. All information obtained by Horizon and its representatives shall be subject to the Confidentiality Agreement.

### Section 5.3 Preparation and Delivery of Quarterly Financial Statements.

(a) As soon as reasonably practicable following May 14, 2021, Topco shall deliver to Horizon the unaudited condensed consolidated balance sheets and statements of operations and comprehensive loss, stockholders’ deficit, and cash flow of Topco (or to the extent available, Intermediate) and its Subsidiaries as of and for the three-month period ended March 31, 2021, presented in a similar format and fashion as the Audited Financial Statements (subject to normal and recurring year-end adjustments and the absence of footnotes) (the “Q1 Financial Statements”); provided that upon delivery of such Q1 Financial Statements, the representations and warranties set forth in Section 3.8 shall be deemed to apply to the Q1 Financial Statements with the same force and effect as if made as of the date of this Agreement.

(b) If the Closing has not occurred prior to August 12, 2021, as soon as reasonably practicable following August 12, 2021, Topco shall deliver to Horizon the unaudited condensed consolidated balance sheets and statements of operations and comprehensive loss, stockholders’ deficit, and cash flow of Topco (or, to the extent available, Intermediate) and its Subsidiaries as of and for the three- and six-month period ended June 30, 2021 (subject to normal and recurring year-end adjustments and the absence of footnotes) (the “Q2 Financial Statements”); provided that upon delivery of such Q2 Financial Statements, the representations and warranties set forth in Section 3.8 shall be deemed to apply to the Q2 Financial Statements with the same force and effect as if made as of the date of this Agreement.

(c) If the Closing has not occurred prior to November 12, 2021, as soon as reasonably practicable following November 12, 2021, Topco shall deliver to Horizon the unaudited condensed consolidated balance sheets and statements of operations and comprehensive loss, cash flow and change in stockholders' equity of Topco (or to the extent available, Intermediate) and its Subsidiaries as of and for the three- and nine-month period ended September 30, 2021 (subject to normal and recurring year-end adjustments and the absence of footnotes) (the "Q3 Financial Statements"); provided that upon delivery of such Q3 Financial Statements, the representation and warranties set forth in [Section 3.8](#) shall be deemed to apply to the Q3 Financial Statements with the same force and effect as if made as of the date of this Agreement.

**Section 5.4 [Acquisition Proposals.](#)** From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with [Article IX](#), the VS Entities and their Subsidiaries shall not, and the VS Entities shall instruct and use their respective reasonable best efforts to cause their respective representatives not to (i) initiate any negotiations with any Person with respect to, or provide any non-public information or data concerning any VS Entity or any of the VS Entities' Subsidiaries to any Person relating to, an Acquisition Proposal or afford to any Person access to the business, properties, assets or personnel of any VS Entity or any of the VS Entities' Subsidiaries in connection with an Acquisition Proposal, (ii) enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an Acquisition Proposal, (iii) grant any waiver, amendment or release under any confidentiality agreement or the anti-takeover Laws of any state with respect to an Acquisition Proposal, or (iv) otherwise knowingly facilitate any such inquiries, proposals, discussions, or negotiations or any effort or attempt by any Person to make an Acquisition Proposal. Notwithstanding anything to the contrary in this Agreement, the VS Entities and their Subsidiaries and their respective representatives shall not be restricted pursuant to the foregoing sentence with respect to any actions taken in connection with (1) the Pre-Closing Restructuring and (2) the arrangement of financing in order to facilitate the consummation of the Transactions or for the financing of the Surviving Corporation and/or the VS Companies following the Closing.

**Section 5.5 [Support of Transaction.](#)** Without limiting any covenant contained in [Article V](#) or [Article VII](#), the VS Entities shall, and shall cause their respective Subsidiaries to (a) use reasonable best efforts to obtain all material consents and approvals of third parties that any of the VS Entities or their respective Subsidiaries or Affiliates are required to obtain in order to consummate the Transactions and (b) take such other action as may be reasonably necessary or as another party hereto may reasonably request to satisfy the conditions of [Article VIII](#) or otherwise to comply with this Agreement and to consummate the Transactions as soon as practicable.

**Section 5.6 [Confidentiality.](#)** All non-public information of Horizon provided to the VS Entities pursuant to this Agreement shall be treated as confidential pursuant to the terms of this [Section 5.6](#). Except as otherwise provided herein, the VS Entities shall, and shall cause each of their respective Subsidiaries to, hold in confidence, and the VS Entities shall not, and shall cause any of their respective Subsidiaries to not, disclose any non-public information of Horizon provided hereunder, including exercising the same degree of care as the VS Entities exercise with their own confidential or proprietary information of a similar nature. The VS Entities and their respective Subsidiaries acknowledge and agree that some of the information provided to the VS Entities and their respective Subsidiaries pursuant to this [Section 5.6](#) may be considered "material non-public information" for purposes of securities Laws, and the VS Entities shall, and shall cause their respective Subsidiaries to, abide by all securities Laws relating to the handling of and acting upon material non-public information of or regarding Horizon. The VS Entities shall, and shall cause their respective Subsidiaries to, only use any such non-public information for purposes of consummating the transactions contemplated by this Agreement. The VS Entities shall not, and shall cause their respective Subsidiaries to not, disclose any portion of such non-public information to any person other than its or their and their respective Affiliates' managers, members, stockholders, officers, directors, partners, employees, legal counsel, accountants, advisors, agents and consultants (collectively, "[Representatives](#)") and who "need to know" such non-public information in order to consummate the transactions contemplated by this Agreement. The VS Entities and their respective Subsidiaries shall be responsible for any breach of this [Section 5.6](#) by any of its Representatives, and agrees, at its sole expense, to

take commercially reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of such non-public information. Notwithstanding anything contained herein to the contrary, this [Section 5.6](#) shall not (i) prohibit the VS Entities and their respective Subsidiaries from disclosing any such non-public information (x) to the extent required in order for the VS Entities and their respective Subsidiaries to comply with applicable Law, provided that the VS Entities and their respective Subsidiaries, to the extent permitted by applicable Law, provides prior written notice of such required disclosure to Horizon and uses commercially reasonable efforts to avoid or minimize the extent of such disclosure, at Horizon's sole expense or (y) if such non-public information becomes generally available to the public other than as a result of disclosure by the VS Entities or their respective Subsidiaries or their respective Representatives in breach of this or (ii) prohibit or limit the VS Entities, their respective Subsidiaries and their Affiliates from disclosing customary or any other reasonable information concerning the transactions contemplated hereby to the VS Entities' and their respective Subsidiaries' investors, prospective investors and advisors bound by customary confidentiality provisions. Notwithstanding the foregoing, any non-public information of Horizon provided to the VS Entities and their respective Subsidiaries pursuant to this Agreement may be disclosed, and no notice as referenced above is required to be provided, pursuant to requests or demands by any Governmental Authority with jurisdiction over the VS Entities, their respective Subsidiaries or their Representatives and not directed at Horizon or the transactions contemplated by this Agreement; provided that the VS Entities, their respective Subsidiaries or their Representatives, as applicable, inform any such authority of the confidential nature of the information disclosed to them and request they keep such information confidential in accordance with such Governmental Authority's policies and procedures.

Section 5.7 [Post-Closing Directors and Officers of the Surviving Corporation](#). Subject to the terms of the Surviving Corporation Governing Documents, VS PubCo shall take all such action within its power as may be necessary or appropriate such that immediately following the Closing:

(a) the Board of Directors of the Surviving Corporation shall consist of nine (9) directors, (i) one (1) of which shall be the chief executive officer of the Surviving Corporation, (ii) five (5) of which shall be designated by Topco, one (1) of which shall qualify as an "independent director" under stock exchange regulations applicable to the Surviving Corporation (the "[VS Designated Directors](#)") and (iii) three (3) of which shall be designated by the Sponsor, two (2) of which shall qualify as "independent directors" under stock exchange regulations applicable to the Surviving Corporation;

(b) the Chairperson of the Board of Directors of the Surviving Corporation shall be designated by Topco and shall serve in such capacity in accordance with the terms of the Surviving Corporation Governing Documents following the Closing; and

(c) the initial officers of the Surviving Corporation shall be as set forth on [Section 5.7\(c\)](#) of the VS Disclosure Letter, who shall serve in such capacity in accordance with the terms of the Surviving Corporation Governing Documents following the Closing.

Section 5.8 [Indemnification and Insurance](#).

(a) From and after the Closing, the Surviving Corporation agrees that it shall indemnify and hold harmless each present and former director and officer of (x) any VS Company (in each case, solely to the extent acting in their capacity as such and to the extent such activities are related to the business of the VS Companies being acquired under this Agreement) (the "[Company Indemnified Parties](#)") and (y) Horizon and each of its Subsidiaries (the "[Horizon Indemnified Parties](#)" together with the Company Indemnified Parties, the "[D&O Indemnified Parties](#)") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Closing, whether asserted or claimed prior to, at or after the Closing, to the fullest extent that the VS Companies, Horizon or their respective Subsidiaries, as the case may be, would have been permitted under applicable Law

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and its respective certificate of incorporation, certificate of formation, bylaws, limited liability company agreement, limited liability partnership agreement, limited liability limited partnership agreement or other Governing Documents in effect on the date of this Agreement to indemnify such D&O Indemnified Parties (including the advancing of expenses as incurred to the fullest extent permitted under applicable Law). Without limiting the foregoing, the Surviving Corporation and the VS Companies shall, and shall cause their Subsidiaries to (i) maintain for a period of not less than six years from the Closing provisions in its certificate of incorporation, certificate of formation, bylaws, limited liability company agreement, limited liability partnership agreement, limited liability limited partnership agreement and other Governing Documents concerning the indemnification and exoneration (including provisions relating to expense advancement) of Horizon's, its Subsidiaries' and the VS Companies' former and current officers, directors, employees, and agents that are no less favorable to those Persons than the provisions of the certificate of incorporation, certificate of formation, bylaws, limited liability company agreement, operating agreement, limited liability partnership agreement, limited liability limited partnership agreement and other Governing Documents of the VS Companies, Horizon or their respective Subsidiaries, as applicable, in each case, as of the date of this Agreement and (ii) not amend, repeal or otherwise modify such provisions in any respect that would adversely affect the rights of those Persons thereunder, in each case, except as required by Law. The Surviving Corporation shall assume, and be liable for, and shall cause the VS Companies to honor, each of the covenants in this [Section 5.8](#).

(b) For a period of six years from the Closing, the Surviving Corporation shall cause the VS Companies to maintain in effect directors' and officers' liability insurance covering those Persons who are currently covered by Horizon's, the VS Companies' or their Subsidiaries' directors' and officers' liability insurance policies (true, correct and complete copies of which have been made available to Horizon or Topco, as applicable, prior to the date of this Agreement or their agents or representatives, respectively) on terms not less favorable than the terms of such current insurance coverage, except that in no event shall the Surviving Corporation be required to pay an annual premium for such insurance in excess of 300% of the aggregate annual premium payable by Horizon or the VS Companies, as applicable, for such insurance policy for the year ended December 31, 2020; provided, however, that (i) the Surviving Corporation or the VS Companies may cause coverage to be extended under the current directors' and officers' liability insurance by obtaining a six-year "tail" policy with respect to claims existing or occurring at or prior to the Closing and if and to the extent such policies have been obtained prior to the Closing with respect to any such Persons, the VS Companies and the Surviving Corporation shall maintain (and cause their Subsidiaries to maintain) such policies in effect and continue to honor the obligations thereunder, and (ii) if any claim is asserted or made within such six-year period, any insurance required to be maintained under this [Section 5.8](#) shall be continued in respect of such claim until the final disposition thereof.

(c) Notwithstanding anything contained in this Agreement to the contrary, this [Section 5.8](#) shall survive the Closing indefinitely and shall be binding, jointly and severally, on the Surviving Corporation and the VS Companies and all successors and assigns of the Surviving Corporation and the VS Companies. In the event that the Surviving Corporation or any of the VS Companies or any of their respective successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, the Surviving Corporation and the VS Companies shall ensure that proper provision shall be made so that the successors and assigns of the Surviving Corporation or any of the VS Companies, as the case may be, shall succeed to the obligations set forth in this [Section 5.8](#).

(d) The provisions of this [Section 5.8\(a\)-\(d\)](#): (i) are intended to be for the benefit of, and shall be enforceable by, each Person who is now, or who has been at any time prior to the date of this Agreement or who becomes prior to the Closing, a D&O Indemnified Party, his or her heirs and his or her personal representatives, (ii) shall be binding on the Surviving Corporation and the VS Companies and their successors and assigns, (iii) are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have, whether pursuant to Law, Contract, Governing Documents, or otherwise and (iv) shall

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survive the consummation of the Closing and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Party without the consent of such D&O Indemnified Party.

(e) On the Closing Date, the Surviving Corporation shall enter into customary indemnification agreements reasonably satisfactory to Topco and Horizon with the post-Closing directors and officers of the Surviving Corporation, which indemnification agreements shall continue to be effective following the Closing.

Section 5.9 Surviving Corporation Organizational Documents. Immediately prior to the Effective Time, VS PubCo shall amend and restate its (a) certificate of incorporation so as to read in its entirety in the form set forth in Exhibit A (the “Surviving Corporation Charter”) and (b) bylaws so as to read in its entirety in the form set forth in Exhibit B (the “Surviving Corporation Bylaws”, together with the Surviving Corporation Charter, the “Surviving Corporation Governing Documents”).

## **ARTICLE VI**

### **COVENANTS OF HORIZON**

#### **Section 6.1 Trust Account Proceeds and Related Available Equity.**

(a) If the amount of cash available in the Trust Account (the “Available Horizon Cash”) after (i) deducting the amount required to satisfy the Horizon Share Redemption Amount and (ii) including the PIPE Subscriptions is reasonably expected to be less than Three Hundred Eighty Million Dollars (\$380,000,000) (which amount, for the avoidance of doubt, is determined before and without regard to the payment of Horizon Transaction Expenses or VS Transaction Expenses) as of the Closing (such amount, as calculated in accordance with the foregoing, the “Minimum Available Horizon Cash Amount”), then Sponsor and its Affiliates shall be entitled, with the prior written consent of Topco (not to be unreasonably conditioned, withheld or delayed), to arrange for the purchase by third Persons of additional shares of Horizon Common Stock at a price per share of \$10.00 in an aggregate amount such that the Available Horizon Cash is, at or immediately prior to the Closing, equal to at least the Minimum Available Horizon Cash Amount after giving effect to such purchases, and such purchases made pursuant to this sentence shall be added to the definition and amount of Available Horizon Cash, including for purposes of Section 8.3(b). Horizon shall reasonably cooperate with and shall take all actions reasonably required to effect the foregoing, including, without limitation, by issuing additional shares of Horizon Common Stock.

(b) Upon satisfaction or waiver of the conditions set forth in Article VIII and provision of notice thereof to the Trustee (which notice Horizon shall provide to the Trustee in accordance with the terms of the Trust Agreement), (i) in accordance with and pursuant to the Trust Agreement, at the Closing, Horizon (a) shall cause any documents, opinions and notices required to be delivered to the Trustee pursuant to the Trust Agreement to be so delivered and (b) shall use its reasonable best efforts to cause the Trustee to, and the Trustee shall thereupon be obligated to (1) pay as and when due all amounts payable to Horizon Stockholders pursuant to the Horizon Share Redemptions, and (2) immediately thereafter, pay all remaining amounts then available in the Trust Account to Horizon for immediate use, subject to this Agreement and the Trust Agreement and (ii) thereafter, the Trust Account shall terminate, except as otherwise provided therein.

Section 6.2 NYSE Listing. From the date hereof through the Closing, Horizon shall ensure that Horizon remains listed as a public company on the NYSE. Prior to the Closing, VS PubCo shall prepare, in consultation with Horizon, and submit to the NYSE a listing application covering the Class A Common Stock issuable in the Merger and the PIPE Subscriptions, and shall obtain approval for the listing of such Class A Common Stock and the parties shall reasonably cooperate with respect to such listing. VS PubCo shall use reasonable best efforts, in consultation with Horizon, to cause the shares of Class A Common Stock into which the Intermediate Common Units held by Topco are redeemable under the Second A&R LLCA, and will use reasonable best efforts to cause the Surviving Corporation Common Warrants, in each case, to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Closing.

Section 6.3 No Solicitation by Horizon. From the date hereof until the Closing Date or, if earlier, the termination of this Agreement in accordance with Article IX, Horizon shall not, and shall cause its Subsidiaries not to, and Horizon shall instruct its and their representatives not to, (i) make any proposal or offer that constitutes a Business Combination Proposal, (ii) initiate any discussions or negotiations with any Person with respect to a Business Combination Proposal or (iii) enter into any acquisition agreement, business combination, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to a Business Combination Proposal, in each case, other than to or with Topco, its Subsidiaries and their respective representatives. From and after the date hereof, Horizon shall, and shall instruct its officers and directors to, and Horizon shall instruct and cause its representatives, its Subsidiaries and their respective representatives to, immediately cease and terminate all discussions and negotiations with any Persons that may be ongoing with respect to a Business Combination Proposal (other than Topco, its Subsidiaries and their respective representatives).

Section 6.4 Horizon Conduct of Business. During the Interim Period, Horizon shall, and shall cause its Subsidiaries to, except as contemplated by this Agreement, as required by applicable Law (including for this purpose any COVID-19 Measures) or as consented to by Topco in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), operate its business in the ordinary course and consistent with past practice. Without limiting the generality of the foregoing, except as consented to by Topco in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied), Horizon shall not, and Horizon shall cause its Subsidiaries not to, except as otherwise contemplated by this Agreement or the Ancillary Agreements or as required by Law:

(a) seek any approval from the Horizon Stockholders to change, modify or amend the Trust Agreement or the Horizon Governing Documents, except as contemplated by the Transaction Proposals;

(b) (i) make or declare any dividend or distribution to the stockholders of Horizon or make any other distributions in respect of any of Horizon's or any of its Subsidiary's capital stock, share capital or equity interests, (ii) split, combine, reclassify or otherwise amend any terms of any shares or series of Horizon's or any of its Subsidiary's capital stock or equity interests or (iii) purchase, repurchase, redeem or otherwise acquire any issued and outstanding share capital, outstanding shares of capital stock, share capital or membership interests, warrants or other equity interests of Horizon or any of its Subsidiaries, other than a redemption of Horizon Common Stock (prior to the Effective Time) made as part of the Horizon Share Redemptions;

(c) (i) make or change any material method of accounting for Tax purposes, (ii) make, change or revoke any material Tax election that is inconsistent with past practices (except as required by the Code or applicable law), (iii) enter into any closing agreement relating to material Taxes, (iv) settle, concede, compromise or abandon any material Tax claim or assessment (v) surrender any right to claim a material refund of Taxes, or (vi) consent to any extension or waiver of the statute of limitations applicable to any material Tax claim or assessment, or (vii) file any amended income or other material Tax Return except as required by applicable Law;

(d) other than as expressly required by the Sponsor Support Agreement, enter into, renew or amend in any material respect, any transaction or Contract with an Affiliate of Horizon or any of its Subsidiaries (including, for the avoidance of doubt, (x) Sponsor and (y) any Person in which Sponsor has a direct or indirect legal, contractual or beneficial ownership interest of 5% or greater);

(e) incur or assume any Indebtedness or guarantee any Indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Horizon or any of its Subsidiaries or guaranty any debt securities of another Person, other than any Indebtedness for borrowed money or guarantee incurred in the ordinary course of business necessary to finance its ordinary course administrative costs and expenses and transaction expenses incurred in connection with the transactions contemplated by this Agreement in an aggregate principal amount not to exceed \$1,000,000;

(f) incur, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any material liabilities, debts or obligations, other than Indebtedness permitted to be incurred under Section 6.4(e)



and other fees and expenses for professional services incurred in the ordinary course in support of the transactions contemplated by this Agreement;

(g) (i) issue any Horizon Common Stock or securities exercisable for or convertible into Horizon Common Stock, other than the issuance of the Horizon Common Stock pursuant to this Agreement, (ii) grant any options, warrants or other equity-based awards with respect to Horizon Common Stock not outstanding on the date hereof or (iii) amend, modify or waive any of the material terms or rights set forth in any Horizon Common Warrant or Horizon Private Placement Warrant or the 2020 Warrant Agreement, including any amendment, modification or reduction of the warrant price set forth therein;

(h) change an annual accounting period for GAAP or adopt or change any material accounting method used by it for GAAP or adopt any material accounting method unless required by GAAP;

(i) acquire any ownership interest in any real property;

(j) acquire by merger or consolidation with, or merge or consolidate with, or purchase substantially all or a material portion of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;

(k) except as reasonably necessary to consummate the Transactions, enter into, renew, modify or revise any Contract; or

(l) enter into any Contract to do any action prohibited under this [Section 6.4](#).

**Section 6.5 [Horizon Public Filings](#).** From the date hereof through the Closing, Horizon will keep current and timely file all reports required to be filed or furnished with the SEC and otherwise comply in all material respects with its reporting obligations under applicable Laws.

**Section 6.6 [PIPE Subscriptions](#).** Unless otherwise approved in writing by Topco, Horizon shall not permit any amendment or modification to be made to, any waiver (in whole or in part) of, or provide consent to modify (including consent to termination), any provision or remedy under, or any replacements of, any of the PIPE Subscription Agreements. Subject to the immediately preceding sentence, Horizon shall use its reasonable best efforts to take, or to cause to be taken, all actions required, necessary or that it otherwise deems to be proper or advisable to consummate the transactions contemplated by the PIPE Subscription Agreements in all material respects on the terms described therein, including using its reasonable best efforts to enforce its rights under the PIPE Subscription Agreements to cause the PIPE Investors to pay to (or as directed by) Horizon the applicable purchase price under each PIPE Investor's applicable PIPE Subscription Agreement in accordance with its terms. In the event that any PIPE Investor terminates, attempts to terminate or provides written notice to Horizon of its intent to terminate such PIPE Investor's obligations under its PIPE Subscription Agreement, then, notwithstanding, but subject to, the foregoing, Horizon shall be entitled to arrange for the purchase by third Persons of shares of Class A Common Stock in connection with the PIPE Subscriptions on the same terms and conditions as the other PIPE Investors have agreed pursuant to their respective PIPE Subscription Agreements; provided that such third Persons shall be reasonably acceptable to Topco as confirmed in writing by Topco prior to Horizon's entry into a PIPE Subscription Agreement with such third Persons.

**Section 6.7 [Support of Transaction](#).** Without limiting any covenant contained in [Article VI](#) or [Article VII](#), Horizon shall, and shall cause its Subsidiaries to (a) use reasonable best efforts to obtain all material consents and approvals of third parties that any of Horizon or its Affiliates are required to obtain in order to consummate the Transactions and (b) take such other action as may be reasonably necessary or as another party hereto may reasonably request to satisfy the conditions of [Article VIII](#) or otherwise to comply with this Agreement and to consummate the Transactions as soon as practicable.



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Section 6.8 Treatment of Warrants. Horizon shall use commercially reasonable efforts to revise the terms of the Horizon Warrants such that the Horizon Warrants are treated as equity under the rules and guidelines of the SEC at and after the Closing, including using commercially reasonable efforts to obtain any shareholder or warrant holder approvals if necessary to accomplish the foregoing. For the avoidance of doubt, the Sponsor shall support Horizon in taking the foregoing actions, including voting its Horizon Common Stock and Horizon Warrants in favor of any such changes if such a vote is required.

## ARTICLE VII

### JOINT COVENANTS

#### Section 7.1 Regulatory Approvals; Other Filings.

(a) Horizon shall cooperate in good faith with the VS Entities and any Governmental Authority and undertake (and not waive its rights under the PIPE Subscription Agreement with respect to the PIPE Investors' obligations with respect to Regulatory Approvals) promptly any and all action required to satisfy the Regulatory Approvals and complete lawfully the Transactions as soon as practicable (but in any event prior to the Agreement End Date) and any and all action necessary or advisable to (x) consummate the Transactions as contemplated hereby and (y) avoid, prevent, eliminate or remove the actual or threatened commencement of any proceeding in any forum by or on behalf of any Governmental Authority or the issuance of any Governmental Order that would delay, enjoin, prevent, restrain or otherwise prohibit the consummation of the Transactions.

(b) With respect to each of the Regulatory Approvals and any other requests, inquiries, Actions or other proceedings by or from Governmental Authorities, Horizon shall (and, to the extent required, shall not waive its rights under the PIPE Subscription Agreement with respect to the PIPE Investors' obligations with respect to Regulatory Approvals) (i) diligently and expeditiously defend and use reasonable best efforts to obtain any necessary clearance, approval, consent, or Governmental Authorization under any applicable Laws prescribed or enforceable by any Governmental Authority for the Transactions and to resolve any objections as may be asserted by any Governmental Authority with respect to the Transactions; and (ii) cooperate fully with each other in the defense of such matters. To the extent not prohibited by Law, the VS Entities shall promptly furnish to Horizon, and Horizon shall promptly furnish to the VS Entities, copies of any notices or substantive written communications received by such party or any of its Affiliates from any Governmental Authority with respect to the Transactions, and each party shall permit counsel to the other parties an opportunity to review in advance, and each party shall consider in good faith the views of such counsel in connection with, any proposed written communications by such party and/or its Affiliates to any Governmental Authority concerning the Transactions; provided, that none of the parties shall enter into any agreement with any Governmental Authority relating to any Regulatory Approval contemplated in this Agreement without the prior written consent of the other parties. To the extent not prohibited by Law, the VS Entities agree to provide Horizon and its counsel, and Horizon agrees to provide the VS Entities and their counsel, the opportunity, on reasonable advance notice, to participate in any substantive meetings or discussions, either in person, by telephone or video conference, between such party and/or any of its Affiliates, agents or advisors, on the one hand, and any Governmental Authority, on the other hand, concerning or in connection with the Transactions. Each of the VS Entities and Horizon agree to make all filings under Antitrust Laws (if any) as soon as practicable after execution of this Agreement, and to provide all information reasonably required of such Person and to reasonably cooperate with each other in connection with the Regulatory Approvals. To the extent applicable, the Parties shall request early termination of the applicable waiting period under any Antitrust Law.

(c) Without limiting the generality of the foregoing, Horizon shall use reasonable best efforts to take any and all actions necessary to consummate the Transactions in accordance with the terms hereof.

(d) Subject to Section 8.2, the VS Entities, on the one hand, and Horizon, on the other, shall each be responsible for and pay one-half of the filing fees payable to the Governmental Authorities in connection with the Transactions.

Section 7.2 Preparation of Proxy Statement/Registration Statement; Stockholders' Meeting and Approvals.

(a) Proxy Statement/Registration Statement and Prospectus.

(i) As promptly as practicable after the execution of this Agreement, (x) Horizon and the VS Entities shall jointly prepare and Horizon shall file with the SEC, mutually acceptable materials which shall include the proxy statement to be filed by Horizon with the SEC as part of the registration statement (the "Registration Statement") and sent to the Horizon Stockholders relating to the Horizon Stockholders' Meeting (such proxy statement, together with any amendments or supplements thereto, the "Proxy Statement") and (y) Horizon and the VS Entities shall jointly prepare and VS PubCo shall file with the SEC the Registration Statement, in which the Proxy Statement will be included (the "Proxy Statement/Registration Statement"), in connection with the registration under the Securities Act of the shares of Surviving Corporation Common Stock and Surviving Corporation Common Warrants to be issued in exchange for the issued and outstanding Horizon Common Stock and Horizon Common Warrants. Each of Horizon and the VS Entities shall use its reasonable best efforts to cause the Proxy Statement/Registration Statement to comply with the rules and regulations promulgated by the SEC, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the transactions contemplated thereby, and to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated hereby. Each of Horizon and the VS Entities agrees to furnish to the other party all information concerning itself, its Subsidiaries, officers, directors, managers, stockholders, and other equityholders and information regarding such other matters as may be reasonably necessary or advisable or as may be reasonably requested in connection with the Proxy Statement/Registration Statement, a Current Report on Form 8-K pursuant to the Exchange Act in connection with the Transactions, or any other statement, filing, notice or application made by or on behalf of Horizon, the VS Entities or their respective Subsidiaries to any regulatory authority (including the NYSE) in connection with the Transactions (the "Solicitation Documents"). Horizon will cause the Proxy Statement/Registration Statement to be mailed to the Horizon Stockholders in each case promptly after the Registration Statement is declared effective under the Securities Act.

(ii) To the extent not prohibited by Law, each of Horizon and the VS Entities will advise the other parties, as promptly as practicable after such party receives notice thereof, of the time when the Proxy Statement/Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of the Surviving Corporation Common Stock for offering or sale in any jurisdiction, of the initiation or written threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Proxy Statement/Registration Statement or for additional information. To the extent not prohibited by Law, each of Horizon and the VS Entities and their counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement/Registration Statement and any Solicitation Document each time before any such document is filed with the SEC by Horizon or VS PubCo, and each shall give reasonable and good faith consideration to any comments made by the other parties and their counsel. To the extent not prohibited by Law, each of Horizon and the VS Entities shall provide the other parties and their counsel with (i) any comments or other communications, whether written or oral, that such party or its counsel may receive from time to time from the SEC or its staff with respect to the Proxy Statement/Registration Statement or Solicitation Documents promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in the response of such party to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the other parties or their counsel in any discussions or meetings with the SEC.

(iii) Each of Horizon and the VS Entities shall ensure that none of the information supplied by or on its behalf for inclusion or incorporation by reference in (A) the Registration Statement will, at the

time the Registration Statement is filed with the SEC, at each time it is amended and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, or (B) the Proxy Statement will, at the date it is first mailed to the Horizon Stockholders and at the time of the Horizon Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(iv) If at any time prior to the Closing any information relating to Horizon, the VS Entities or any of their respective Subsidiaries, Affiliates, directors or officers is discovered by Horizon or the VS Entities, which is required to be set forth in an amendment or supplement to the Proxy Statement/Registration Statement, so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the Horizon Stockholders.

(b) Horizon Stockholder Approval. Horizon shall (a) as promptly as practicable after the Registration Statement is declared effective under the Securities Act, (i) cause the Proxy Statement to be disseminated to holders of Horizon Common Stock in compliance with applicable Law, (ii) duly (1) establish a record date for, (2) call and give notice of and (3) convene and hold a meeting of its members (the "Horizon Stockholders' Meeting") in accordance with the Horizon Governing Documents and applicable NYSE Listing Rules for a date no later than thirty (30) Business Days following the date the Registration Statement is declared effective, and (iii) solicit proxies from the holders of Horizon Common Stock to vote in favor of each of the Transaction Proposals, and (b) provide its members with the opportunity to elect to effect an Horizon Share Redemption. Horizon shall, through its Board of Directors, recommend to its members (A) the approval by special resolution of the Plan of Merger and the authorization of the Merger and the transactions contemplated thereby, (B) the adoption and approval of this Agreement in accordance with applicable Law and exchange rules and regulations, (C) the approval of the issuance of shares of Surviving Corporation Common Stock by the Surviving Corporation in connection with the Transactions pursuant to applicable NYSE Listing Rules, (D) the approval of the issuance of more than one percent (1%) of the Surviving Corporation's outstanding common stock to a "related party" pursuant to applicable NYSE Listing Rules, (E) the adoption and approval of any other proposals as the SEC (or staff member thereof) may indicate are necessary in its comments to the Registration Statement or correspondence related thereto, (F) the adoption and approval of any other proposals as reasonably agreed by Horizon and the VS Entities to be necessary or appropriate in connection with the Transactions and (G) the adjournment of the Horizon Stockholders' Meeting, if necessary, to permit further solicitation of proxies because there are not sufficient votes to approve and adopt any of the foregoing (such proposals in (A) through (G), together, the "Transaction Proposals"), and include such recommendation in the Proxy Statement. The Board of Directors of Horizon shall not withdraw, amend, qualify or modify its recommendation to the members of Horizon that they vote in favor of the Transaction Proposals (together with any withdrawal, amendment, qualification or modification of its recommendation to the members of Horizon in Section 7.2(c), a "Modification in Recommendation"). To the fullest extent permitted by applicable Law, (x) Horizon's obligations to establish a record date for, duly call, give notice of, convene and hold the Horizon Stockholders' Meeting shall not be affected by any Modification in Recommendation, (y) Horizon agrees to establish a record date for, duly call, give notice of, convene and hold the Horizon Stockholders' Meeting and submit for approval the Transaction Proposals and (z) Horizon agrees that if the Horizon Stockholder Approval shall not have been obtained at any such Horizon Stockholders' Meeting, then Horizon shall promptly continue to take all such necessary actions, including the actions required by this Section 7.2(b), and hold additional Horizon Stockholders' Meetings in order to obtain the Horizon Stockholder Approval. Horizon may only adjourn the Horizon Stockholders' Meeting (i) to solicit additional proxies for the purpose of obtaining the Horizon

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Stockholder Approval, (ii) for the absence of a quorum and (iii) to allow reasonable additional time for the filing or mailing of any supplemental or amended disclosure that Horizon has determined in good faith after consultation with outside legal counsel is required under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by members of Horizon prior to the Horizon Stockholders' Meeting; provided, that the Horizon Stockholders' Meeting (x) may not be adjourned to a date that is more than 20 days after the date for which the Horizon Stockholders' Meeting was originally scheduled (excluding any adjournments required by applicable Law) and (y) is held no later than three (3) Business Days prior to the Agreement End Date.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Horizon Board of Directors may, at any time prior to, but not after, obtaining the Horizon Stockholder Approval, make a Modification in Recommendation in response to an Intervening Event (an "Intervening Event Change in Recommendation") if the Board of Directors of Horizon determines in good faith that the failure to take such action would be a breach of the fiduciary duties of the Board of Directors of Horizon to the members of Horizon under applicable Law, provided, that: (A) the VS Entities shall have received written notice from Horizon of Horizon's intention to make an Intervening Event Change in Recommendation at least five (5) Business Days prior to the taking of such action by Horizon (the "Intervening Event Notice Period"), which notice shall specify the applicable Intervening Event in reasonable detail, (B) during such period and prior to making an Intervening Event Change in Recommendation, if requested by the VS Entities, Horizon and its representatives shall have negotiated in good faith with the VS Entities and their representatives regarding any revisions or adjustments proposed by the VS Entities to the terms and conditions of this Agreement as would enable Horizon to proceed with its recommendation of this Agreement and the Transactions and not make such Intervening Event Change in Recommendation and (C) Horizon may make an Intervening Event Change in Recommendation only if the Board of Directors of Horizon, after considering in good faith any revisions or adjustments to the terms and conditions of this Agreement that the VS Entities shall have, prior to the expiration of the 5-Business Day period, offered in writing in a manner that would form a binding contract if accepted by Horizon, continues to determine in good faith that failure to make an Intervening Event Change in Recommendation would be a breach of its fiduciary duties to the Horizon Stockholders under applicable Law. An "Intervening Event" shall mean any fact, circumstance, occurrence, event, development, change or condition or combination thereof that (i) was not known to Horizon or its Board of Directors as of the date of this Agreement (or if known, the consequences of which were not known) and (ii) does not relate to any Business Combination Proposal; provided, however, that (1) any change in the price or trading volume of Horizon Common Stock shall not be taken into account for purposes of determining whether an Intervening Event has occurred (provided that the underlying factors may be taken into account); (2) in no event shall any fact, circumstance, occurrence, event, development, change or condition or combination thereof that has had or would reasonably be expected to have an adverse effect on the business or financial condition of the VS Companies constitute an Intervening Event unless such event, fact, circumstance or development constitutes a Company Material Adverse Effect; and (3) the VS Companies meeting, failing to meet or exceeding projections shall not be taken into account for purposes of determining whether an Intervening Event has occurred (provided that the underlying factors may be taken into account). Notwithstanding anything to the contrary contained in this Agreement, during an Intervening Event Notice Period, the obligations of Horizon and/or Horizon's Board of Directors to make filings with the SEC with respect to the proposals contemplated herein, to give notice for or to convene a meeting, or make a recommendation, shall be tolled during such period, and in the event of filing and/or notice for a meeting was made prior to the Intervening Event Notice Period, Horizon shall be permitted to adjourn such meeting and amend such filing as necessary to provide sufficient time for the Horizon Stockholders to consider any revised recommendation.

(d) Horizon agrees that it shall provide the holders of Horizon Common Stock the opportunity to elect redemption of such shares of Horizon Common Stock in connection with the Horizon Stockholders' Meeting as required by the Horizon Governing Documents.

Section 7.3 Tax Matters.

(a) Preparation of Tax Returns.

(i) Intermediate shall, or at the option of Topco, Topco shall, at the cost and expense of the VS Companies, prepare and file, or cause to be prepared and filed, all Flow-Thru Tax Returns of the VS Companies that solely relate to any tax periods ending on or prior to the Closing Date and that are filed after the Closing Date ("Pre-Closing Flow-Thru Tax Returns"). Any such Pre-Closing Flow-Thru Tax Returns shall be prepared in a manner consistent with the past practices of the VS Companies, except as required by applicable Law or set forth herein. Unless Topco elects to prepare any such Pre-Closing Flow-Thru Tax Returns, at least twenty (20) days prior to the filing of any such Pre-Closing Flow-Thru Tax Return, a draft copy of such Pre-Closing Flow-Thru Tax Return shall be delivered to Topco for its review and approval. If Topco elects to prepare any such Pre-Closing Flow-Thru Tax Returns, at least twenty (20) days prior to the filing of any such Pre-Closing Flow-Thru Tax Return, Topco shall deliver a draft of such Pre-Closing Flow-Thru Tax Return to VS PubCo and consider in good faith any reasonable comments provided by VS PubCo.

(ii) Intermediate shall prepare and file, or cause to be prepared and filed, all Flow-Thru Tax Returns of the VS Companies for Straddle Periods ("Straddle Period Flow-Thru Tax Returns"). Any such Straddle Period Flow-Thru Tax Returns shall be prepared in a manner consistent with the past practices of the VS Companies, except as required by applicable Law or set forth herein. At least twenty (20) days prior to the filing of any such Straddle Period Flow-Thru Tax Return, a draft copy of such Straddle Period Flow-Thru Tax Return shall be delivered to Topco for its review and comment, and Intermediate shall incorporate any reasonable comments provided by Topco prior to the filing of such Straddle Period Flow-Thru Tax Return.

(iii) Intermediate shall take all actions necessary or advisable to ensure that Intermediate (and, to the extent provided for in the Tax Receivable Agreement, any of its Subsidiaries that is treated as a partnership for applicable Tax purposes) will have made a valid election pursuant to Section 754 of the Code (and elections available under similar provisions of state or local Law) that is effective for the taxable period that includes the Closing Date. Determinations with respect to the allocation of taxable items of any VS Company that are to be made as a result of the transfer of interests in Intermediate made in connection with the Transactions shall be made under Section 706 of the Code utilizing the "interim closing method" described in Treasury Regulation 1.706-4 under the monthly convention. All deductions triggered in connection with the Transactions shall be reported on income Tax Returns of the VS Companies as attributable to Pre-Closing Tax Periods to the extent there is a reasonable basis for such position under applicable law.

(iv) Unless otherwise required by applicable Law, with respect to any such matter that could reasonably be expected to result in any Tax liability for which Topco, Intermediate or any of their beneficial owners could be responsible, without the prior written consent of Topco (not to be unreasonably withheld, conditioned, or delayed), VS PubCo shall not, and shall not permit any of its Affiliates to file (other than in accordance with Section 7.3(a)(i)), re-file, or amend any Flow-Thru Tax Return of the VS Companies with respect to any taxable period beginning prior to the Closing Date, or make any Tax election that would have retroactive effect with respect to any taxable period beginning prior to the Closing Date. With respect to any taxable period that includes or begins after the Closing Date, VS PubCo agrees (i) that it will not take (and that it will cause its Affiliates not to take) any position with respect to any Tax Return, refund claim, or other document filed with any Tax authority, in any Tax information statement delivered to its stockholders, or in connection with an audit of VS PubCo's Tax Returns; and (ii) that it will not make any other written filing, disclosure, or communication to or with any other Person (any action described in clauses (i) and (ii), a "VS PubCo Tax Position") that is inconsistent with (or reasonably could be expected to provide a basis for taking a position inconsistent with) the positions taken by any VS Company (or any Subsidiary of a VS Company) on income Tax Returns or Schedules K-1 or with respect to Tax Matters, in each case, filed

by the VS Companies or disclosed to VS PubCo (any such position taken by any VS Company or any Subsidiary of a VS Company, an “Applicable Tax Position”) or reasonably could be expected to suggest that the Tax Return positions reflected in any Applicable Tax Position is or may be incorrect, unless VS PubCo gives prior written notice to Topco and the VS Companies of any such VS PubCo Tax Position, considers the Applicable Tax Position in good faith, and discusses any such VS PubCo Tax Position (including the basis for such VS PubCo Tax Position) in good faith with Topco and the VS Companies.

(v) The parties acknowledge and agree that the Merger is intended to be treated as a “reorganization” within the meaning of Section 368(a)(1)(F) of the Code for U.S. federal (and applicable state and local) income Tax purposes, and each party shall, and shall cause its respective Affiliates to, use reasonable best efforts to cause the Merger to so qualify and file all Tax Returns consistent with, and take no position inconsistent with, such treatment, except as otherwise required by applicable Law or pursuant to a final “determination” within the meaning of Section 1313(a) of the Code. The parties hereby adopt this Agreement as a “plan of reorganization” within the meaning of Treasury Regulation Sections 1.368-2(g) and 1.368-3(a).

(vi) To the extent any opinion relating to Tax matters with respect to Horizon (or its pre-Closing shareholders) is requested by the SEC in connection with the Proxy Statement/Registration Statement, the parties hereby acknowledge and agree that legal counsel to Horizon shall deliver any such opinion (and, for the avoidance of doubt, legal counsel to the VS Companies shall not be obligated to deliver any such opinion). In furtherance of the foregoing, each party shall, and shall cause its respective Affiliates, to (i) cooperate in order to facilitate the issuance of any such opinion and (ii) deliver to Kirkland & Ellis LLP (or other applicable legal counsel to Horizon), in each case, to the extent requested by such counsel, a duly executed certificate dated as of the date requested by such counsel, containing such representations, warranties and covenants as shall be reasonably necessary or appropriate to enable such counsel to render any such opinion.

(b) Tax Contest Matters. With respect to any Tax audit, examination, proceeding, claimed deficiency or other similar matter relating to the VS Companies that pertains to Flow-Thru Tax Returns with respect to Pre-Closing Tax Periods (a “Tax Matter”), if directed by VS PubCo in its sole discretion, with respect to any Tax liability arising out of a Tax Matter, the VS Companies shall make the election provided for in Section 6226(a) of the Code (or any similar or corresponding election for state or local Tax purposes) with respect to such liability, subject to compliance with the applicable provisions of the Second A&R LLCA. Each of the parties shall reasonably cooperate, at the expense of VS PubCo, in connection with VS PubCo’s decision to cause any VS Company to make any such election.

(c) Allocation Matters. For purposes of determining the U.S. federal (and applicable state and local) income Tax consequences of the Transactions, the parties agree to use any reasonable allocation of values among the assets of the VS Companies that is selected by Topco and VS PubCo together in good faith. The parties agree to (and to cause their Affiliates to) file all of their Tax Returns consistent with any such allocation of values selected by Topco and VS PubCo together in good faith, except as otherwise required pursuant to a final “determination” within the meaning of Section 1313(a) of the Code.

(d) Cooperation. Horizon, the Surviving Corporation, and the VS Entities shall reasonably cooperate, and shall cause their respective Affiliates to reasonably cooperate, in connection with the preparation and filing of Tax Returns and any audit, examination, or other Legal Proceeding regarding Taxes with respect to any Pre-Closing Tax Period of the VS Companies. Such cooperation shall include the retention of and (upon the other party’s request) the provision of records and information reasonably relevant to any such Tax Return or any such audit, examination, or other Legal Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and the provision of such powers of attorney as may be necessary to allow for the filing of Tax Returns or the control of any Legal Proceedings relating to Taxes.

(e) Transfer Taxes. All transfer, documentary, sales, use, real property, stamp, registration and other similar Taxes, fees and costs (including any associated penalties and interest) ("Transfer Taxes") incurred by Horizon, the Surviving Corporation, and the VS Companies in connection with this Agreement shall be borne by Intermediate.

Section 7.4 Section 16 Matters. Prior to the Closing, each of the VS Entities and Horizon shall take all such steps as may be required (to the extent permitted under applicable Law) to cause any dispositions of the equity interests of Horizon or the VS Company Interests or acquisitions of Surviving Corporation Common Stock or Surviving Corporation Common Warrants (including, in each case, securities deliverable upon exercise, vesting or settlement of any derivative securities) resulting from the Transactions by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act in connection with the Transactions to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 7.5 Incentive Equity Plan. Prior to the Closing Date, VS PubCo and Topco, as sole shareholder of VS PubCo prior to the Effective Time, shall approve and adopt (i) the Vivid Seats Inc. 2021 Omnibus Incentive Plan in substantially the form attached hereto as Exhibit G (the "Incentive Equity Plan") and (ii) the Vivid Seats Inc. 2021 Employee Stock Purchase Plan (the "ESPP") in substantially the form attached hereto as Exhibit H. Subject to applicable Law, as promptly as reasonably practicable following the Closing Date (and, in any event, within ten (10) Business Days following the Closing Date), the Surviving Corporation shall file an effective registration statement on Form S-8 (or other applicable form) with respect to the Class A Common Stock (following the Effective Time) issuable under the Incentive Equity Plan and the ESPP, and the Surviving Corporation shall use reasonable best efforts to maintain the effectiveness of such registration statement(s) (and maintain the current status of the prospectus or prospectuses contained therein) for so long as awards granted pursuant to the Incentive Equity Plan and ESPP remain outstanding.

## ARTICLE VIII

### CONDITIONS TO OBLIGATIONS

Section 8.1 Conditions to Obligations of Horizon and the VS Entities. The obligations of Horizon and the VS Entities to consummate, or cause to be consummated, the Transactions at the Closing is subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by all of such parties:

(a) The Horizon Stockholder Approval shall have been obtained;

(b) All approvals or consents, and all waiting or other periods, or extensions thereof, under the Laws set forth and described on Section 8.1(a) of the VS Disclosure Letter (collectively, the "Regulatory Approvals") shall have been obtained or have expired or been terminated, as applicable; and any agreement with the Federal Trade Commission, Department of Justice or other applicable Governmental Authority not to consummate the transaction contemplated hereby under any Antitrust Laws shall have expired or been terminated;

(c) No Governmental Authority of competent jurisdiction shall have issued or entered any Governmental Order, and no Law shall have been enacted or promulgated, that is in effect and prohibits or otherwise prevents the Transactions;

(d) The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and not withdrawn;

(e) The Pre-Closing Restructuring shall have been consummated prior to the Closing in all material respects in accordance with the Pre-Closing Restructuring Plan; and



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(f) The Class A Common Stock shall have been approved for listing on the NYSE and such approval shall not be subject to any conditions or any plan of compliance to which the Surviving Corporation would be subject after the Closing.

Section 8.2 Conditions to Obligations of Horizon. The obligations of Horizon to consummate, or cause to be consummated, the Transactions at the Closing are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Horizon:

(a) The representations and warranties contained in Section 3.1 (Company Organization), Section 3.3 (Due Authorization), Section 3.19(a) (Absence of Changes) and Section 3.24 (Brokers' Fees) shall each be true and correct in all material respects as of the Closing Date as though made on the Closing Date, except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date. The representation and warranty in Section 3.6 (Capitalization) shall be true and correct in all respects other than *de minimis* inaccuracies as of the Closing Date, except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date. Each of the other representations and warranties of the VS Entities contained in this Agreement shall be true and correct (without giving effect to any limitation as to "materiality" or "Company Material Adverse Effect" or other similar materiality qualification set forth therein) as of the Closing Date, except to the extent that any such representations and warranties expressly speaks as to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Effect; provided, that for purposes of this Section 8.2(a), no Event that is contemplated by the Pre-Closing Restructuring Plan shall be deemed to constitute an inaccuracy in or breach of any such representations and warranties;

(b) Each of the covenants of the VS Entities to be performed as of or prior to the Closing shall have been performed in all material respects; and

(c) There shall not have occurred any Company Material Adverse Effect.

Section 8.3 Conditions to the Obligations of the VS Entities. The obligation of the VS Entities to consummate, or cause to be consummated, the Transactions at the Closing is subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by the VS Entities:

(a) The representations and warranties contained in Section 4.1 (Company Organization), Section 4.2 (Due Authorization), Section 4.11 (Trust Account), Section 4.13 (Absence of Changes) and Section 4.19 (Brokers' Fees) shall each be true and correct in all material respects as of the Closing Date as though made on the Closing Date, except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date. The representation and warranty in Section 4.5 (Capitalization) shall be true and correct in all respects other than *de minimis* inaccuracies as of the Closing Date, except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date. Each of the other representations and warranties of Horizon contained in this Agreement shall be true and correct (without giving effect to any limitation as to "materiality" or "Horizon Material Adverse Effect" or other similar materiality qualification set forth therein) as of the Closing Date, except to the extent that any such representations and warranties expressly speaks as to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, except for, in each case, inaccuracies or omissions that individually or in the aggregate, has not had, and would not reasonably be expected to have, an Horizon Material Adverse Effect;

(b) Each of the covenants of Horizon to be performed as of or prior to the Closing shall have been performed in all material respects; and



(c) The Available Horizon Cash shall be no less than the Minimum Available Horizon Cash Amount immediately prior to the Closing after deducting the amount required to satisfy the Horizon Share Redemption Amount (and for the avoidance of doubt, excluding the Horizon Transaction Expenses and VS Transaction Expenses).

## ARTICLE IX

### TERMINATION/EFFECTIVENESS

Section 9.1 Termination. This Agreement may be terminated and the Transactions abandoned:

- (a) by mutual written consent of Topco and Horizon;
- (b) by written notice from Topco or Horizon to the other if any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which has become final and nonappealable and has the effect of making consummation of the Transactions illegal or otherwise preventing or prohibiting consummation of the Transactions;
- (c) by written notice from Topco to Horizon if the Horizon Stockholder Approval shall not have been obtained by reason of the failure to obtain the required vote at the Horizon Stockholders' Meeting duly convened therefor or at any adjournment or postponement thereof;
- (d) by written notice from Topco to Horizon after there has been a Modification in Recommendation;
- (e) prior to the Closing, by written notice to Topco from Horizon if (i) there is any breach of any representation, warranty, covenant or agreement on the part of the VS Entities set forth in this Agreement, such that the conditions specified in Section 8.2(a) or Section 8.2(b) would not be satisfied at the Closing (a "Terminating Company Breach"), except that, if such Terminating Company Breach is curable by the VS Entities through the exercise of their respective reasonable best efforts, then, for a period of up to twenty (20) days after receipt by Topco of notice from Horizon of such breach (the "Company Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Company Breach is not cured within the Company Cure Period, or (ii) the Closing has not occurred on or before October 21, 2021 (the "Agreement End Date"), unless Horizon is then in material breach hereof; or
- (f) prior to the Closing, by written notice to Horizon from Topco if (i) there is any breach of any representation, warranty, covenant or agreement on the part of Horizon set forth in this Agreement, such that the conditions specified in Section 8.3(a) or Section 8.3(b) would not be satisfied at the Closing (a "Terminating Horizon Breach"), except that, if any such Terminating Horizon Breach is curable by Horizon through the exercise of its reasonable best efforts, then, for a period of up to twenty (20) days after receipt by Horizon of notice from Topco of such breach (the "Horizon Cure Period"), such termination shall not be effective, and such termination shall become effective only if the Terminating Horizon Breach is not cured within the Horizon Cure Period or (ii) the Closing has not occurred on or before the Agreement End Date, unless any of the VS Entities is then in material breach hereof.

Section 9.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 9.1, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party hereto or its respective Affiliates, officers, directors or stockholders, other than liability of the VS Entities or Horizon, as the case may be, for any fraud or willful and material breach of this Agreement occurring prior to such termination, except that the provisions of this Section 9.2 and Article X and the Confidentiality Agreement shall survive any termination of this Agreement.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 Trust Account Waiver. Each of the VS Entities acknowledges that Horizon is a blank check company with the powers and privileges to effect a Business Combination. Each of the VS Entities further acknowledges that, as described in the prospectus dated August 20, 2020 (the “Prospectus”) available at [www.sec.gov](http://www.sec.gov), substantially all of Horizon assets consist of the cash proceeds of Horizon’s initial public offering and private placements of its securities and substantially all of those proceeds have been deposited in a trust account for the benefit of Horizon, certain of its public stockholders and the underwriters of Horizon’s initial public offering (the “Trust Account”). Each of the VS Entities acknowledges that it has been advised by Horizon that, except with respect to interest earned on the funds held in the Trust Account that may be released to Horizon to pay its Tax and similar obligations, the Trust Agreement provides that cash in the Trust Account may be disbursed only (i) if Horizon completes the transaction which constitutes a Business Combination, then to those Persons and in such amounts as described in the Prospectus; (ii) if Horizon fails to complete a Business Combination within the allotted time period and liquidates, subject to the terms of the Trust Agreement, to Horizon in limited amounts to permit Horizon to pay the costs and expenses of its liquidation and dissolution, and then to Horizon’s public stockholders; and (iii) if Horizon holds a stockholder vote to amend Horizon’s amended and restated memorandum and articles of association to modify the substance or timing of the obligation to redeem 100% of Horizon Common Stock (prior to the Effective Time) if Horizon fails to complete a Business Combination within the allotted time period, then for the redemption of any Horizon Common Stock (prior to the Effective Time) properly tendered in connection with such vote. For and in consideration of Horizon entering into this Agreement, the receipt and sufficiency of which are hereby acknowledged, each of the VS Entities, on behalf of themselves and their respective Affiliates, hereby agree that they do not now have and shall not at any time hereafter have, and irrevocably waive any right, title, interest or claim of any kind they or any of their respective Affiliates have or may have in the future, in or to any monies in the Trust Account or distributions therefrom and agree not to seek recourse against the Trust Account or any funds distributed therefrom as a result of, arising out of, this Agreement and any negotiations, Contracts or agreements with Horizon or any other matter, and regardless of whether such claim arises based on contract, tort, equity or any other theory of legal liability. Each of the VS Entities agrees and acknowledges that such irrevocable waiver is material to this Agreement and specifically relied upon by Horizon to induce Horizon to enter in this Agreement, and each of the VS Entities further intends and understands such waiver to be valid, binding and enforceable against such party and each of its Affiliates under applicable Law. Notwithstanding the foregoing, (x) nothing herein shall serve to limit or prohibit Topco and the VS Companies’ right to pursue a claim against Horizon for legal relief against monies or other assets held outside the Trust Account (other than distributions therefrom directly or indirectly to Horizon’s public stockholders), for specific performance or other equitable relief in connection with the consummation of the Transactions (including a claim for Horizon to specifically perform its obligations under this Agreement and cause the disbursement of the balance of the cash remaining in the Trust Account (after giving effect to the Horizon Share Redemptions) to Topco in accordance with the terms of this Agreement and the Trust Agreement) so long as such claim would not affect Horizon’s ability to fulfill its obligation to effectuate the Horizon Share Redemptions and (y) nothing herein shall serve to limit or prohibit any claims that Topco or any of the VS Companies may have in the future against Horizon’s assets or funds that are not held in the Trust Account (including any funds that have been released from the Trust Account and any assets that have been purchased or acquired with any such funds, but excluding distributions from the Trust Account directly or indirectly to Horizon’s public stockholders).

Section 10.2 Waiver. Any party to this Agreement may, at any time prior to the Closing, by action taken by its Board of Directors, Board of Managers or other Persons thereunto duly authorized, (a) extend the time for the performance of the obligations or acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties (of another party hereto) that are contained in this Agreement or (c) waive compliance by the other parties hereto with any of the agreements or conditions contained in this Agreement, but such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party granting such extension or waiver.

Section 10.3 Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email during normal business hours (in each case in this clause (iv), solely if receipt is confirmed, but excluding any automated reply, such as an out-of-office notification), addressed as follows:

(a) If to the Horizon Entities, to:

c/o Horizon Sponsor, LLC  
600 Steamboat Road, Suite 200  
Greenwich, CT 06830  
Email: Robert.Ott@Eldridge.com  
Attention: Robert Ott

with a copy to:

Kirkland & Ellis LLP  
2049 Century Park East, 37<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attention: Damon R. Fisher, P.C.  
Bianca Levin-Soler  
Email: dfisher@kirkland.com  
bianca.levin-soler@kirkland.com

*and*

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Christian Nagler  
Aslam Rawoof  
Email: christian.nagler@kirkland.com  
aslam.rawoof@kirkland.com

(b) If to the VS Companies, to:

Vivid Seats LLC 111 N.  
Canal Street, Suite 800  
Chicago, IL 60606  
Attention: Stanley Chia  
Lawrence Fey  
Email: stan@vividseats.com  
lawrence.fey@vividseats.com

with copies (which shall not constitute notice) to:

Latham & Watkins LLP  
330 N. Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attention: Bradley C. Faris  
Justin G. Hamill  
Owen Alexander  
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or to such other address or addresses as the parties may from time to time designate in writing. Copies delivered solely to outside counsel shall not constitute notice.

Section 10.4 Assignment. No party hereto shall assign this Agreement or any part hereof without the prior written consent of the other parties and any such transfer without prior written consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

Section 10.5 Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to (i) confer upon or give any Person (including any equityholder, any current or former director, manager, officer, employee or independent contractor of the VS Companies, or any participant in any Company Benefit Plan or other employee benefit plan, agreement or other arrangement (or any dependent or beneficiary thereof)), other than the parties hereto, any right or remedies under or by reason of this Agreement, (ii) establish, amend or modify any employee benefit plan, program, policy, agreement or arrangement or (iii) limit the right of Horizon, the VS Companies or their respective Affiliates to amend, terminate or otherwise modify any Company Benefit Plan or other employee benefit plan, policy, agreement or other arrangement following the Closing; provided, however, that the D&O Indemnified Parties (and their successors, heirs and representatives) are intended third-party beneficiaries of, and may enforce, Section 5.8(a)-(d), and the VS Non-Recourse Parties and the Horizon Non-Recourse Parties (and their successors, heirs and representatives), are intended third-party beneficiaries of, and may enforce, Section 10.16.

Section 10.6 Expenses. Except as otherwise set forth in this Agreement, each party hereto shall be responsible for and pay its own expenses incurred in connection with this Agreement and the Transactions, including all fees of its legal counsel, financial advisers and accountants; provided that if the Closing shall occur, the Surviving Corporation shall pay or cause to be paid, in accordance with Section 2.10(c), the Horizon Transaction Expenses and the VS Transaction Expenses. For the avoidance of doubt, any payments to be made (or to cause to be made) by the Surviving Corporation shall be paid upon the Closing and release of proceeds from the Trust Account.

Section 10.7 Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the Transactions, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction; provided, however, that, as relates to Horizon, the CICA shall govern the interpretation of the duties of the Horizon Board of Directors in connection with this Agreement, in each case, to the extent required by the Laws of the Cayman Islands.

Section 10.8 Headings; Counterparts. The headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts (including by electronic mail or in .pdf), and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document, but all of which together shall constitute one and the same instrument.

Section 10.9 VS Companies and Horizon Disclosure Letters. The VS Disclosure Letter and the Horizon Disclosure Letter (including, in each case, any section thereof) referenced herein are a part of this Agreement as if fully set forth herein. All references herein to the VS Disclosure Letter and/or the Horizon Disclosure Letter (including, in each case, any section thereof) shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. Any disclosure made by a party in the applicable Disclosure Letter, or any section thereof, with reference to any section of this Agreement or section of the applicable Disclosure Letter shall be deemed to be a disclosure with respect to such other applicable sections of this Agreement or sections of applicable Disclosure Letter if it is reasonably apparent on the face of such disclosure that such disclosure is responsive to such other section of this Agreement or section of the applicable Disclosure Letter. Certain

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information set forth in the Disclosure Letters is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made in this Agreement, nor shall such information be deemed to establish a standard of materiality.

Section 10.10 Entire Agreement. (i) This Agreement (together with the VS Disclosure Letter and the Horizon Disclosure Letter), (ii) the Confidentiality Agreement, dated as of February 12, 2021, between Horizon and Topco (the “Confidentiality Agreement”), (iii) the Registration Rights Agreement, (iv) the Tax Receivable Agreement, (v) the Sponsor Support Agreement, (vi) the Second A&R LLCA, (vii) the Crescent Purchase Agreement, (viii) the PIPE Subscription Agreements, (ix) the Stockholders’ Agreement, and (x) the Exchange Agreement (clauses (ii) – (x), collectively with all other agreements contemplated hereby or thereby, including in connection with the Pre-Closing Restructuring, the “Ancillary Agreements”) constitute the entire agreement among the parties to this Agreement relating to the Transactions and supersede any other agreements, whether written or oral, that may have been made or entered into by or among any of the parties hereto or any of their respective Subsidiaries relating to the Transactions. No representations, warranties, covenants, understandings, agreements, oral or otherwise, relating to the Transactions exist between such parties except as expressly set forth in this Agreement and the Ancillary Agreements.

Section 10.11 Amendments. This Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing executed in the same manner as this Agreement and which makes reference to this Agreement.

Section 10.12 Publicity.

(a) All press releases or other public communications relating to the Transactions, and the method of the release for publication thereof, shall prior to the Closing be subject to the prior mutual approval of Horizon and Topco, which approval shall not be unreasonably withheld, conditioned or delayed by any party; provided that no party shall be required to obtain consent pursuant to this Section 10.12(a) to the extent any proposed release or statement is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 10.12(a).

(b) The restriction in Section 10.12(a) shall not apply to the extent the public announcement is required by applicable securities Law, any Governmental Authority or stock exchange rule; provided, however, that in such an event, the party making the announcement shall use its commercially reasonable efforts to consult with the other party in advance as to its form, content and timing.

Section 10.13 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the Laws governing this Agreement, they shall take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by Law and, to the extent necessary, shall amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the parties.

Section 10.14 Jurisdiction; Waiver of Jury Trial.

(a) Any proceeding or Action based upon, arising out of or related to this Agreement or the Transactions must be brought in the Court of Chancery of the State of Delaware (or, to the extent such Court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding or Action, waives any objection it

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may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and agrees not to bring any proceeding or Action arising out of or relating to this Agreement or the Transactions in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Legal Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action, suit or proceeding brought pursuant to this Section 10.14.

(b) Each party acknowledges and agrees that any controversy which may arise under this Agreement and the Transactions is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably, unconditionally and voluntarily waives any right such party may have to a trial by jury in respect of any Action, suit or proceeding directly or indirectly arising out of or relating to this Agreement or any of the Transactions.

Section 10.15 Enforcement. The parties hereto agree that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specific enforcement of the terms and provisions of this Agreement, in addition to any other remedy to which any party is entitled at law or in equity. In the event that any Action shall be brought in equity to enforce the provisions of this Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law, and each party agrees to waive any requirement for the securing or posting of any bond in connection therewith.

### Section 10.16 Non-Recourse.

(a) Solely with respect to Topco, the VS Companies and the Horizon Entities, this Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement or the Transactions may only be brought against, the VS Entities and the Horizon Entities as named parties hereto; and

(b) Except to the extent a party hereto (and then only to the extent of the specific obligations undertaken by such party hereto), (i) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative of Topco, the VS Companies (each, a “VS Non-Recourse Party”) or the Horizon Entities (each, a “Horizon Non-Recourse Party”) and (ii) no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or representative of any of the foregoing shall have any liability (whether in Contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of Topco, the VS Companies, or the Horizon Entities under this Agreement for any claim based on, arising out of, or related to this Agreement or the Transactions.

(c) For the avoidance of doubt, the Sponsor shall not have any obligations under this Agreement (other than with respect to Section 6.8).

Section 10.17 Non-Survival of Representations, Warranties and Covenants. Except as otherwise contemplated by Section 9.2, none of the representations, warranties, covenants, obligations or other agreements in this Agreement or in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, obligations, agreements and other provisions, shall survive the Closing and shall terminate and expire upon the occurrence of the Closing (and there shall be no liability after the Closing in respect thereof), except for (a) those covenants and agreements contained herein that by their terms expressly apply in whole or in part after the Closing and then only with respect to any breaches occurring after the Closing and (b) this Section 10.17.

Section 10.18 Conflicts and Privilege.

(a) Horizon and the VS Entities hereby agree that, in the event a dispute with respect to this Agreement or the Transactions arises after the Closing between or among Horizon and/or Sponsor, on the one hand, and Topco and/or the VS Companies, on the other hand, any legal counsel (including Kirkland & Ellis LLP) that represented Horizon and/or Sponsor prior to the Closing may represent Sponsor in such dispute even though the interests of Sponsor may be directly adverse to Horizon, and even though such counsel may have represented Horizon in a matter substantially related to such dispute, or may be handling ongoing matters for Horizon and/or Sponsor. Notwithstanding the foregoing, any privileged communications or information shared by Topco or the VS Companies prior to the Closing with Horizon or Sponsor (in any capacity) under a common interest agreement shall remain the privileged communications or information of Topco and/or the VS Companies following the Closing.

(b) Horizon and the VS Entities hereby agree that, in the event a dispute with respect to this Agreement or the Transactions arises after the Closing between or among the VS Designated Directors and/or Topco, on the one hand, and the VS Companies and/or Horizon, on the other hand, any legal counsel (including Latham & Watkins LLP) that represented the VS Designated Directors and/or Topco prior to the Closing may represent the VS Designated Directors and/or Topco in such dispute even though the interests of the VS Designated Directors and/or Topco may be directly adverse to Horizon and/or the VS Companies, and even though such counsel may have represented Horizon and/or the VS Companies in a matter substantially related to such dispute, or may be handling ongoing matters for Horizon, the VS Companies, the VS Designated Directors and/or Topco. Horizon and the VS Companies further agree that, as to all legally privileged communications prior to the Closing between or among any legal counsel (including Latham & Watkins LLP) that represented Topco, the VS Designated Directors and/or the VS Companies prior to the Closing and any one or more such Persons that relate in any way to the Transactions, the attorney/client privilege and the expectation of client confidence belongs to Topco and/or the VS Designated Directors and may be controlled by Topco and/or such VS Designated Directors, and shall not pass to or be claimed or controlled by Horizon (after giving effect to the Closing) or the VS Companies; provided that Topco and/or the VS Designated Directors shall not waive such attorney/client privilege other than to the extent they determine appropriate in connection with the enforcement or defense of their respective rights or obligations existing under this Agreement. Notwithstanding the foregoing, any privileged communications or information shared by Horizon prior to the Closing with Topco or the VS Designated Directors (in any capacity) under a common interest agreement shall remain the privileged communications or information of the VS Companies following the Closing.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

**Horizon Acquisition Corporation**  
a Cayman Islands exempted company

By: /s/ Todd Boehly  
Name: Todd Boehly  
Title: Chairman, Chief Executive Officer  
and Chief Financial Officer

**Horizon Sponsor, LLC**  
a Delaware limited liability company

By: /s/ Todd Boehly  
Name: Todd Boehly  
Title: Chief Financial Officer



**Hoya Topco, LLC**  
a Delaware limited liability company

By: /s/ Stanley Chia  
Name: Stanley Chia  
Title: Chief Executive Officer and  
President

**Hoya Intermediate, LLC**  
a Delaware limited liability company

By: /s/ Stanley Chia  
Name: Stanley Chia  
Title: Chief Executive Officer and  
President

**Vivid Seats Inc.**  
a Delaware corporation

By: /s/ Stanley Chia  
Name: Stanley Chia  
Title: Chief Executive Officer and  
President

**CERTIFICATE OF INCORPORATION  
OF  
VIVID SEATS INC.  
(a Delaware corporation)**

**ARTICLE I.**

The name of the Corporation is Vivid Seats Inc. (the “Corporation”).

**ARTICLE II.**

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, in the county of New Castle. The name of its registered agent at such address is National Registered Agents, Inc.

**ARTICLE III.**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as it now exists or may hereafter be amended and supplemented.

**ARTICLE IV.**

The total number of shares of all classes of stock that the Corporation is authorized to issue is one thousand (1,000) shares, all of which shall be common stock with a par value of one cent (\$0.01).

**ARTICLE V.**

The name and mailing address of the incorporator is: Timothy P. O’Brien, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611.

**ARTICLE VI.**

From time to time any of the provisions of this certificate of incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this certificate of incorporation are granted subject to the provisions of this Article VI.

**ARTICLE VII.**

In furtherance and not in limitation of the rights, powers, privileges and discretionary authority granted or conferred by the General Corporation Law of the State of Delaware or other statutes or laws of the State of Delaware, the board of directors of the Corporation (the “Board of Directors”) is expressly authorized to make, alter, amend or repeal the bylaws of the Corporation, without any action on the part of the stockholders, but the stockholders may make additional bylaws and may alter, amend or repeal any bylaw whether adopted by them or otherwise. The Corporation may in its bylaws confer powers upon its Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

**ARTICLE VIII.**

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

**ARTICLE IX.**

The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this Article IX shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**ARTICLE X.**

The Corporation shall, to the maximum extent permitted from time to time under the laws of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against any and all expenses (including attorneys' fees and expenses), judgments, fines, penalties and amounts paid in settlement or incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification 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 person. No amendment or repeal of this Article X shall apply to or adversely affect any right or protection of a director or officer of the Corporation with respect to any act or omission of such director or officer occurring prior to such amendment or repeal.

*[Signature page follows.]*

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I, THE UNDERSIGNED, being the sole incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, herein declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 29<sup>th</sup> day of March, 2021.

/s/ Timothy P. O'Brien

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Timothy P. O'Brien, *Sole Incorporator*

Annex B-3

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
VIVID SEATS INC.

[●], being the Chief Executive Officer of Vivid Seats Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”), DOES HEREBY CERTIFY as follows:

**FIRST:** The present name of the Corporation is Vivid Seats Inc. The Corporation was incorporated under the name Vivid Seats Inc. by the filing of its original Certificate of Incorporation with the Delaware Secretary of State on March 29, 2021 (the “Certificate of Incorporation”).

**SECOND:** The Board of Directors of the Corporation, pursuant to a unanimous written consent, adopted resolutions authorizing the Corporation to amend, integrate and restate the Certificate of Incorporation of the Corporation in its entirety to read as set forth in Exhibit A attached hereto and made a part hereof (the “Restated Certificate”).

**THIRD:** The Restated Certificate restates and integrates and further amends the Certificate of Incorporation of this Corporation.

**FOURTH:** That the stockholders of the Corporation, pursuant to written consent, approved and adopted the Restated Certificate in accordance with Section 228 of the General Corporation Law of the State of Delaware.

**FIFTH:** The Restated Certificate has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, Vivid Seats Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer on this [●] day of [●], 2021.

VIVID SEATS INC.

By: \_\_\_\_\_

Name:

Title: Chief Executive Officer

*Signature Page to Amended and Restated Certificate of Incorporation of Vivid Seats Inc.*

**Exhibit A**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
VIVID SEATS INC.**

**ARTICLE ONE.**

The name of the corporation is Vivid Seats Inc. (the “Corporation”).

**ARTICLE TWO.**

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE THREE.**

The nature and purpose of the business 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 (“DGCL”).

**ARTICLE FOUR.**

Section 4.01 Authorized Shares. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is [●] shares, consisting of:

1. [●] shares of Preferred Stock, par value \$[●] per share (the “Preferred Stock”);
2. [●] shares of Class A Common Stock, par value \$[●] per share (the “Class A Common Stock”); and
3. [●] shares of Class B Common Stock, par value \$[●] per share (the “Class B Common Stock” and together with the Class A Common Stock, the “Common Stock”).

The Preferred Stock and the Common Stock shall have the designations, rights, powers and preferences and the qualifications, restrictions and limitations thereof, if any, set forth below.

Section 4.02 Preferred Stock. The Board of Directors of the Corporation (the “Board of Directors”) is authorized, subject to limitations prescribed by law, to provide, by resolution or resolutions for the issuance of shares of Preferred Stock in one or more series, and with respect to each series, to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other special rights, if any, of the shares of each such series, and any qualifications, limitations or restrictions thereof. The powers (including voting powers), preferences, and relative, participating, optional and other special rights of each series of Preferred Stock and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the approval of the Board of Directors and by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in an election of directors, without the separate vote of the holders of the Preferred Stock as a class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.03 Common Stock.

(a) Voting Rights. Except as otherwise required by the DGCL or as provided by or pursuant to the provisions of this Certificate of Incorporation:

(i) Each holder of Class A Common Stock shall be entitled to one (1) vote for each share of Class A Common Stock held of record by such holder.

(ii) Each holder of Class B Common Stock shall be entitled to one (1) vote for each share of Class B Common Stock held of record by such holder.

(iii) Except as otherwise required in this Certificate of Incorporation or by applicable law, the holders of Class A Common Stock and Class B Common Stock shall vote together as a single class on all matters on which stockholders are generally entitled to vote (and, 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).

(iv) The holders of shares of Common Stock shall not have cumulative voting rights.

(v) The holders of the outstanding shares of Class A Common Stock and Class B Common Stock shall be entitled to vote separately as a class upon any amendment to this Certificate of Incorporation (including by merger, consolidation, reorganization or similar event or otherwise) that would alter or change the powers, preferences, or special rights of a class of stock so as to affect them adversely. The number of authorized shares of Class A Common Stock or Class B Common 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 stock of the Corporation entitled to vote generally in an election of directors, without a separate vote of the holders of the Class A Common Stock or Class B Common Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends in cash, stock or property of the Corporation, such dividends may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board of Directors in its discretion shall determine. Dividends shall not be declared or paid on the Class B Common Stock.

(c) Liquidation, Dissolution, etc. 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 as required by law 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. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(d) Reclassification. Neither the Class A Common Stock nor the Class B Common Stock may be subdivided, split, consolidated, reclassified, or otherwise changed unless contemporaneously therewith the other class of Common Stock and the common units (the "LLC Units") of [Intermediate], a Delaware limited liability company ("[Intermediate]") are subdivided, consolidated, reclassified, or otherwise changed in the same proportion and in the same manner.

(e) Restriction on Issuance of Class B Common Stock. No shares of Class B Common Stock may be issued by the Corporation except to a holder of LLC Units, such that after such issuance the holder of shares of Class B Common Stock holds an identical number of LLC Units and shares of Class B Common Stock.

(f) Restriction on Transfer of Class B Common Stock. A holder of Class B Common Stock may transfer or assign shares of Class B Common Stock (or any legal or beneficial interest in such shares) (directly or indirectly,



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including by operation of law) only to a Permitted Transferee (as defined in the LLC Agreement) of such holder, and only if such holder also simultaneously transfers an equal number of such holder's LLC Units to such Permitted Transferee in compliance with the LLC Agreement. Any purported transfer of shares of Class B Common Stock to any Person other than a Permitted Transferee, or not accompanied by a simultaneous transfer of such holder's LLC Units to such Permitted Transferee shall be null and void ab initio and shall not be recognized or given effect by the Corporation, the Corporation's transfer agent or the Secretary of the Corporation. "LLC Agreement" means that certain Second Amended and Restated Limited Liability Company Agreement of [Intermediate], dated on or about the date hereof, as it may be amended and/or restated from time to time.

(g) No Preemptive or Subscription Rights. No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

### Section 4.04 Certain Provisions Related to Redemption Rights.

(a) Reservation of Shares of Class A Common Stock for Redemptions or Exchanges. The Corporation will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock, for the purposes of effecting any redemptions or exchanges pursuant to the applicable provisions of Article IX of the LLC Agreement, the number of shares of Class A Common Stock that are issuable in connection with the redemption or exchange of all outstanding LLC Units as a result of any Redemption or Direct Exchange pursuant to the applicable provisions of Article IX of the LLC Agreement (including for this purpose any LLC Units issuable upon the exercise of any options, warrants or similar rights to acquire LLC Units), as applicable (without regard to any restrictions on Redemption contained therein and assuming no Redemptions for Cash Payment). All the shares of Class A Common Stock that are issued upon any such Redemption or Direct Exchange of such LLC Units will, upon issuance, be validly issued, fully paid and non-assessable.

(b) Retirement of Class B Common Stock. In the event that (a) a share of Class A Common Stock is issued as a result of any Redemption or Direct Exchange of an LLC Unit held by a Unitholder pursuant to the applicable provisions of Article IX of the LLC Agreement or (b) a Redemption by Cash Payment is effected with respect to any LLC Unit held by a Unitholder pursuant to the applicable provisions of Article IX of the LLC Agreement, a share of Class B Common Stock held by such Unitholder chosen by the Corporation in its sole discretion will automatically and without further action on the part of the Corporation or the holder thereof be transferred to the Corporation for no consideration and thereupon shall automatically be retired and cease to exist, and such share thereafter may not be reissued by the Corporation.

(c) Defined Terms. For purposes of this Certificate of Incorporation, the following terms have the meaning given to them in the LLC Agreement: "Cash Payment", "Direct Exchange", "Redemption" and "Unitholder".

## **ARTICLE FIVE.**

Section 5.01 Board of Directors. Except as otherwise provided in this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.02 Number of Directors. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances or otherwise, the number of directors which shall constitute the Board of Directors shall initially be 9 and, thereafter, shall be fixed from time to time exclusively by resolution of the Board.

Section 5.03 Classes of Directors. The directors of the Corporation, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided into three classes, as nearly equal in number as possible, hereby designated Class I, Class II and Class III.

Section 5.04 Election and Term of Office. The directors shall be elected by a plurality of the votes of the shares cast; *provided* that, whenever the holders of any class or series of capital stock of the Corporation are entitled to elect one or more directors pursuant to the provisions of this Certificate of Incorporation (including, but not limited to, any duly authorized certificate of designation), such directors shall be elected by a plurality of the votes cast by such holders. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the date hereof, the term of office of the initial Class II directors shall expire at the second succeeding annual meeting of stockholders following the date hereof and the term of office of the initial Class III directors shall expire at the third succeeding annual meeting of the stockholders following the date hereof. For the purposes hereof, the Board of Directors may assign directors already in office to Class I, Class II and Class III. At each annual meeting of stockholders after the date hereof, directors elected to replace those of a class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting after their election and until their respective successors shall have been duly elected and qualified. Each director shall hold office until the annual meeting of stockholders for the year in which such director's term expires and a successor is duly elected and qualified or until his or her earlier death, resignation or removal. Nothing in this Certificate of Incorporation shall preclude a director from serving consecutive terms. Elections of directors need not be by written ballot unless the Bylaws of the Corporation (as amended and/or restated, the "Bylaws") shall so provide.

Section 5.05 Newly-Created Directorships and Vacancies. Subject to the rights of the holders of any series of Preferred Stock then outstanding and except as otherwise set forth in that certain Stockholders' Agreement, dated on or about the date hereof, by and among the Corporation and the investors named therein (as the same may be amended, modified or supplemented from time to time, the "Stockholders' Agreement"), newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, disqualification, removal from office or any other cause may be filled only by resolution of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and may not be filled in any other manner. A director elected or appointed to fill a vacancy shall serve for the unexpired term of his or her predecessor in office and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. A director elected or appointed 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 elected or appointed and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 5.06 Removal and Resignation of Directors. Subject to the rights of the holders of any series of Preferred Stock then outstanding and except as otherwise set forth in the Stockholders' Agreement, notwithstanding any other provision of this Certificate of Incorporation, (i) prior to the Trigger Date (as defined below), directors may be removed with or without cause upon the affirmative vote of stockholders representing at least a majority in voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in an election of directors, voting together as a single class ("Voting Stock") and (ii) on and after the Trigger Date, directors may only be removed for cause and only upon the affirmative vote of stockholders representing at least sixty-six and two-thirds percent (66<sup>2</sup>/<sub>3</sub>%) of the voting power of the outstanding shares of Voting Stock, voting together as a single class, at a meeting of the Corporation's stockholders called for that purpose. Any director may resign at any time upon notice to the Corporation. "Trigger Date" means the first date on which the Principal Stockholder and its Affiliated Companies cease to beneficially own in the aggregate (directly or indirectly) at least thirty percent (30%) of the Voting Stock. "Principal Stockholder" means, collectively, [Hoya TopCo], GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP, GTCR Golder Rauner, L.L.C., GTCR Golder Rauner II, L.L.C., GTCR Management XI LLC and GTCR LLC. "Affiliated Companies" means (a) in respect of the Principal Stockholder, any entity that Controls, is Controlled by or is under common Control with the Principal Stockholder (other than the Corporation and any entity that is Controlled by the Corporation) and any investment funds managed by the Principal Stockholder and (b) in respect of the Corporation, any entity Controlled by the Corporation. "Control" is defined in ARTICLE NINE.

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Section 5.07 Rights of Holders of Preferred Stock. Notwithstanding the provisions of this ARTICLE FIVE, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately or together by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorship shall be subject to the rights of such series of Preferred Stock. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

Section 5.08 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

Section 5.09 Chair of the Board. So long as the Principal Stockholder beneficially owns in the aggregate (directly or indirectly) at least thirty percent (30%) or more of the voting power of the then outstanding shares of capital stock of the Corporation then entitled to vote generally in the election of directors, the Chair of the Board of Directors shall be designated solely by a majority of the directors nominated or designated for nomination by the Principal Stockholder.

## **ARTICLE SIX.**

Section 6.01 Limitation of Liability.

(a) To the fullest extent permitted by the DGCL as it now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent such amendment permits the Corporation to provide broader exculpation than permitted prior thereto), no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages arising from a breach of fiduciary duty as a director.

(b) Any amendment, repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal or modification with respect to any act, omission or other matter occurring prior to such amendment, repeal or modification.

## **ARTICLE SEVEN.**

Section 7.01 Action by Written Consent. Prior to the first date on which the Principal Stockholder and its Affiliated Companies cease to beneficially own in the aggregate (directly or indirectly) at least fifty percent (50%) of the Voting Stock, any action which is required or permitted to be taken by the Corporation's stockholders may be taken without a meeting, without prior notice (except as otherwise set forth in the

Stockholders' Agreement)<sup>1</sup> and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of the Corporation's stock entitled to vote thereon were present and voted. From and after the first date on which the Principal Stockholder and its Affiliated Companies cease to beneficially own in the aggregate (directly or indirectly) at least fifty percent (50%) of the Voting Stock, any action which is required or permitted to be taken by the Corporation's stockholders may be taken only at a duly called annual or special meeting of the Corporation's stockholders and the power of stockholders to consent in writing without a meeting is specifically denied without a meeting; *provided, however*, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided the resolutions creating such series of Preferred Stock.

Section 7.02 Special Meetings of Stockholders. Subject to the rights of the holders of any series of Preferred Stock then outstanding and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only (i) by or at the direction of the Board of Directors or the Chair of the Board of Directors pursuant to a written resolution adopted by the affirmative vote of the majority of the total number of directors that the Corporation would have if there were no vacancies, or (ii) prior to the Trigger Date, by the Chair of the Board of Directors at the written request of the holders of a majority of the voting power of the then outstanding shares of Voting Stock in the manner provided for in the Bylaws. Any business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of the meeting.

## **ARTICLE EIGHT.**

Section 8.01 Certain Acknowledgments. In recognition and anticipation that (i) certain of the directors, partners, principals, officers, members, managers and/or employees of the Principal Stockholder or its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies may serve as directors or officers of the Corporation and (ii) the Principal Stockholder and its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) the Corporation and its Affiliated Companies may engage in material business transactions with the Principal Stockholder and its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies, and that the Corporation is expected to benefit therefrom, the provisions of this ARTICLE EIGHT are set forth to regulate and define to the fullest extent permitted by law the conduct of certain affairs of the Corporation as they may involve the Principal Stockholder and/or its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies and/or their respective directors, partners, principals, officers, members, managers and/or employees, including any of the foregoing who serve as officers or directors of the Corporation (collectively, the "Exempted Persons"), and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith. "Sponsor" means Horizon Sponsor, LLC. "Sponsor Affiliated Companies" means (a) in respect of the Sponsor, any entity that Controls, is Controlled by or is under common Control with the Sponsor (other than the Corporation and any entity that is Controlled by the Corporation) and any investment funds managed by the Sponsor and (b) in respect of the Corporation, any entity Controlled by the Corporation.

Section 8.02 Competition and Corporate Opportunities. To the fullest extent permitted by applicable law, none of the Exempted Persons shall have any fiduciary duty to refrain from engaging directly or indirectly in the

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<sup>1</sup> Note to Draft: Stockholders' Agreement to include requirements to provide Sponsor 2 Business Days' prior written notice before the taking of any stockholder action by written consent. Such prior written notice shall provide reasonable specificity regarding the proposed action, including reasons for the proposed action and any documents and reasonable documentation relating thereto.

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same or similar business activities or lines of business as the Corporation or any of its Affiliated Companies, and no Exempted Person shall be liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of any such activities of the Principal Stockholder, its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies or such Exempted Person. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its Affiliated Companies, renounces any interest or expectancy of the Corporation and its Affiliated Companies in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Exempted Persons or the Sponsor or the Sponsor Affiliated Companies, even if the opportunity is one that the Corporation or its Affiliated Companies might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, the Sponsor and the Sponsor Affiliated Companies and each Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation or its Affiliated Companies and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation, any of its Affiliated Companies or its stockholders for breach of any fiduciary or other duty, as a director, officer or stockholder of the Corporation, by reason of the fact that the Principal Stockholder, one of its Affiliated Companies or the Sponsor or the Sponsor Affiliated Companies or any such Exempted Person pursues or acquires such business opportunity, sells, assigns, transfers or directs such business opportunity to another Person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or any of its Affiliated Companies. Notwithstanding anything to the contrary in this Section 8.02, the Corporation does not renounce any interest or expectancy it may have in any business opportunity that is expressly offered to any Exempted Person solely in his or her capacity as a director or officer of the Corporation, and not in any other capacity.

Section 8.03 Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this ARTICLE EIGHT, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity 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.

Section 8.04 Amendment of this Article. Notwithstanding anything to the contrary elsewhere contained in this Certificate of Incorporation, subject to the rights of the holders of any series of Preferred Stock then outstanding, and in addition to any vote required by applicable law, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with, this ARTICLE EIGHT; *provided however*, that, to the fullest extent permitted by law, neither the alteration, amendment or repeal of this ARTICLE EIGHT nor the adoption of any provision of this Certificate of Incorporation inconsistent with this ARTICLE EIGHT 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 which such Exempted Person becomes aware prior to such alteration, amendment, repeal or adoption.

Section 8.05 Deemed Notice. Any Person purchasing or otherwise acquiring or holding any interest in any shares of the Corporation shall be deemed to have notice of and to have consented to the provisions of this ARTICLE EIGHT.

## **ARTICLE NINE.**

Section 9.01 Section 203 of the DGCL. The Corporation expressly elects not to be subject to the provisions of Section 203 of the DGCL.

Section 9.02 Business Combinations with Interested Stockholders. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, the Corporation shall not engage in any Business Combination (as defined hereinafter) at any point in time at which the Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act of 1934, as amended (the "Exchange Act"), with any Interested

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Stockholder (as defined hereinafter) for a period of three years following the time that such stockholder became an Interested Stockholder, unless:

(a) prior to such time the Board of Directors approved either the Business Combination or the transaction which resulted in such stockholder becoming an Interested Stockholder;

(b) upon consummation of the transaction which resulted in such stockholder becoming an Interested Stockholder, such stockholder owned at least eighty-five percent (85%) of the Voting Stock of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the Voting Stock outstanding (but not the outstanding Voting Stock owned by such Interested Stockholder) those shares owned (i) by Persons (as defined hereinafter) who are directors and also officers of the Corporation and (ii) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(c) at or subsequent to such time the Business Combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the outstanding Voting Stock which is not owned by such Interested Stockholder.

Section 9.03 Exceptions to Prohibition on Interested Stockholder Transactions. The restrictions contained in this ARTICLE NINE shall not apply if:

(a) a stockholder becomes an Interested Stockholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an Interested Stockholder; and (ii) would not, at any time within the three-year period immediately prior to a Business Combination between the Corporation and such stockholder, have been an Interested Stockholder but for the inadvertent acquisition of ownership; or

(b) the Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Section 9.03(b); (ii) is with or by a Person who either was not an Interested Stockholder during the previous three years or who became an Interested Stockholder with the approval of the Board of Directors; and (iii) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any Person becoming an Interested Stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding Voting Stock of the Corporation. The Corporation shall give not less than 20 days' notice to all Interested Stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 9.03(b).

Section 9.04 Definitions. As used in this ARTICLE NINE and, solely with respect to the term "Control," as also used in Section 5.06, only, and unless otherwise provided by the express terms of this ARTICLE NINE, the following terms shall have the meanings ascribed to them as set forth in this Section 9.04:

(a) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person;

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(b) “Associate,” when used to indicate a relationship with any Person, means: (i) any corporation, partnership, unincorporated association or other entity of which such Person is a director, officer or general partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of Voting Stock; (ii) any trust or other estate in which such Person has at least a twenty percent (20%) beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person;

(c) “Business Combination” means:

(i) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation with (A) the Interested Stockholder, or (B) any other corporation, partnership, unincorporated association or entity if the merger or consolidation is caused by the Interested Stockholder and as a result of such merger or consolidation Section 9.02 is not applicable to the surviving entity;

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding Stock of the Corporation;

(iii) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any Stock of the Corporation or of such subsidiary to the Interested Stockholder, except: (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Stockholder became such; (B) pursuant to an exchange of LLC Units into Class A Common Stock, to the extent provided in the LLC Agreement, (C) pursuant to a merger under Section 251(g) of the DGCL; (D) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of Stock of the Corporation subsequent to the time the Interested Stockholder became such; (E) pursuant to an exchange offer by the Corporation to purchase Stock made on the same terms to all holders of such Stock; or (F) any issuance or transfer of Stock by the Corporation; *provided however*, that in no case under items (D)-(F) of this Section 9.04(c)(iii) shall there be an increase in the Interested Stockholder’s proportionate share of the Stock of any class or series of the Corporation or of the Voting Stock of the Corporation;

(iv) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the Stock of any class or series, or securities convertible into the Stock of any class or series, of the Corporation or of any such subsidiary which is owned by the Interested Stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of Stock not caused, directly or indirectly, by the Interested Stockholder; or

(v) any receipt by the Interested Stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in Section 9.04(c)(i)-(iv)) provided by or through the Corporation or any direct or indirect majority-owned subsidiary of the Corporation;

(d) “Control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract or otherwise. A Person who is the owner of twenty percent (20%) or more of the outstanding Voting Stock of any corporation, partnership,



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unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary; notwithstanding the foregoing, a presumption of control shall not apply where such Person holds Voting Stock, in good faith and not for the purpose of circumventing this ARTICLE NINE, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group (as such term is used in Rule 13d-5 under the Securities Exchange Act of 1934, as such Rule is in effect as of the date of this Certificate of Incorporation) have control of such entity;

(e) “Interested Stockholder” means any Person (other than the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of fifteen percent (15%) or more of the outstanding Voting Stock of the Corporation, or (ii) is an Affiliate or Associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding Voting Stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person. Notwithstanding anything in this ARTICLE NINE to the contrary, the term “Interested Stockholder” shall not include: (w) the Sponsor or the Sponsor Affiliated Companies, (x) the Principal Stockholder or any of its Affiliated Companies, or any other Person with whom any of the foregoing are acting as a group or in concert for the purpose of acquiring, holding, voting or disposing of shares of Stock of the Corporation, (y) any Person who would otherwise be an Interested Stockholder either in connection with or because of a transfer, sale, assignment, conveyance, hypothecation, encumbrance, or other disposition of five percent (5%) or more of the outstanding Voting Stock of the Corporation (in one transaction or a series of transactions) by the Principal Stockholder or any of its Affiliated Companies, or any of its Affiliates or Associates to such Person; *provided, however*, that such Person was not an Interested Stockholder prior to such transfer, sale, assignment, conveyance, hypothecation, encumbrance, or other disposition; or (z) any Person whose ownership of shares in excess of the fifteen percent (15%) limitation set forth herein is the result of action taken solely by the Corporation, *provided that*, for purposes of this clause (z) only, such Person shall be an Interested Stockholder if thereafter such Person acquires additional shares of Voting Stock of the Corporation, except as a result of further action by the Corporation not caused, directly or indirectly, by such Person;

(f) “Owner,” including the terms “own” and “owned,” when used with respect to any Stock, means a Person that individually or with or through any of its Affiliates or Associates beneficially owns such Stock, directly or indirectly, or has (A) the right to acquire such Stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the owner of Stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person’s Affiliates or Associates until such tendered Stock is accepted for purchase or exchange; or (B) the right to vote such Stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the owner of any Stock because of such Person’s right to vote such Stock if the agreement, arrangement or understanding to vote such Stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more Persons; or (C) any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in (B) of this Section 9.04(f)), or disposing of such Stock with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, such Stock; *provided*, that, for the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock of the Corporation deemed to be outstanding shall include Stock deemed to be owned by the Person through application of this definition of “owned” but shall not include any other unissued Stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

(g) “Person” means any individual, corporation, partnership, unincorporated association or other entity;

(h) “Stock” means, with respect to any corporation, any capital stock of such corporation and, with respect to any other entity, any equity interest of such entity; and



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(i) “**Voting Stock**” means, with respect to any corporation, Stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of Voting Stock shall refer to such percentage of the votes of such Voting Stock.

### **ARTICLE TEN.**

Section 10.01 Amendments to the Bylaws. Subject to the rights of holders of any series of Preferred Stock then outstanding, in furtherance and not in limitation of the powers conferred by law, prior to the Trigger Date, the Bylaws may be amended, altered or repealed and new bylaws made by (i) the Board, (ii) the stockholders by, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any resolution setting forth the terms of any series of Preferred Stock) and any other vote otherwise required by applicable law, the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of Voting Stock. Subject to the rights of holders of any series of Preferred Stock then outstanding, in furtherance and not in limitation of the powers conferred by law, on and after the Trigger Date, the Bylaws may be amended, altered or repealed and new bylaws made by (i) the Board or (ii) by the stockholders by, in addition to the vote of any holders of any class or series of capital stock of the Corporation required herein (including any resolution setting forth the terms of any series of Preferred Stock), the Bylaws or applicable law, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66<sup>2</sup>/3%) of the voting power of the then outstanding shares of Voting Stock, voting together as a single class.

Section 10.02 Amendments to this Certificate of Incorporation. Subject to the rights of holders of any series of Preferred Stock then outstanding, and in addition to any affirmative vote of the holders of any particular class or series of the capital stock required by law or otherwise, no provision of ARTICLE FIVE, ARTICLE SIX, ARTICLE SEVEN, ARTICLE NINE, ARTICLE TEN or ARTICLE ELEVEN of this Certificate of Incorporation may be altered, amended or repealed in any respect, nor may any provision of this Certificate of Incorporation or the Bylaws inconsistent therewith be adopted, unless in addition to any other vote required by this Certificate of Incorporation or otherwise required by law, (i) prior to the Trigger Date, such alteration, amendment, repeal or adoption is approved by the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, and (ii) from and after the Trigger Date, such alteration, amendment, repeal or adoption is approved by the affirmative vote of holders of at least sixty-six and two-thirds percent (66<sup>2</sup>/3%) of the voting power of the then outstanding shares of Voting Stock, voting together as a single class.

### **ARTICLE ELEVEN.**

Section 11.01 Exclusive Forum. Unless this Corporation consents in writing to the selection of an alternative forum, (A) the Court of Chancery (the “Chancery Court”) of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by 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 current or former director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, the Certificate of Incorporation or the Bylaws or (iv) any action asserting a claim governed by the internal affairs doctrine; *provided that* for the avoidance of doubt, this provision, including for any “derivative action”, will not apply to suits to enforce a duty or liability created by the Securities Act, the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction; and (B) 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. If any action the subject matter of which is

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within the scope of clause (A) of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a “Foreign Action”) in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (A) of the immediately preceding sentence and (y) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

Section 11.02 Notice. Any Person purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation (including, without limitation, shares of Class A Common Stock) shall be deemed to have notice of and to have consented to the provisions of this ARTICLE ELEVEN.

## **ARTICLE TWELVE.**

Section 12.01 Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this 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, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby.

Annex C-14

**AMENDED AND RESTATED BYLAWS  
OF  
VIVID SEATS INC.**

*A Delaware corporation*  
(Adopted as of [●])

ARTICLE I.  
OFFICES

Section 1.01 Offices. Vivid Seats Inc. (the “Corporation”) may have an office or offices other than its registered office at such place or places, either within or outside the State of Delaware, as the Board of Directors of the Corporation (the “Board of Directors”) may from time to time determine or the business of the Corporation may require. The registered office of the Corporation in the State of Delaware shall be as stated in the Corporation’s certificate of incorporation as then in effect (the “Certificate of Incorporation”).

ARTICLE II.  
MEETINGS OF STOCKHOLDERS

Section 2.01 Place of Meetings. The Board of Directors may designate a place, if any, either within or outside the State of Delaware, as the place of meeting for any annual meeting or for any special meeting of stockholders.

Section 2.02 Annual Meeting. An annual meeting of the stockholders shall be held at such date and time as is specified by resolution of the Board of Directors. At the annual meeting, stockholders shall elect directors to succeed those whose terms expire at such annual meeting and transact such other business as properly may be brought before the annual meeting pursuant to Section 2.11 of these Amended and Restated Bylaws (these “Bylaws”). The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.03 Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Certificate of Incorporation. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors.

Section 2.04 Notice of Meetings. Whenever stockholders are required or permitted to take action at a meeting, notice of the meeting shall be given that shall state the place, if any, date, and time of the meeting of the stockholders, the means of remote communications, if any, by which stockholders and proxyholders not physically present may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the General Corporation Law of the State of Delaware (the “DGCL”) or the Certificate of Incorporation.

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(a) Form of Notice. All such notices shall be delivered in writing or in any other manner permitted by the DGCL. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. If delivered by courier service, notice shall be deemed given at the earlier of when the notice is received or left at such stockholder's address as the same appears on the records of the Corporation. If given by electronic mail, notice shall be deemed given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL. Notice to stockholders may also be given by other forms of electronic transmission consented to by the stockholder. If given by facsimile telecommunication, such notice shall be deemed given when directed to a number at which the stockholder has consented to receive notice by facsimile. If given by a posting on an electronic network together with separate notice to the stockholder of such specific posting, such notice shall be deemed given upon the later of (x) such posting and (y) the giving of such separate notice. If notice is given by any other form of electronic transmission, such notice shall be deemed given when directed to the stockholder. An affidavit of the secretary or an assistant secretary of the Corporation, the transfer agent of the Corporation or any other agent of the Corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

(b) Waiver of Notice. Whenever notice is required to be given under any provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the stockholder entitled to notice, or a waiver by electronic transmission given by the stockholder entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of the stockholders of the Corporation need be specified in any waiver of notice of such meeting. Attendance of a stockholder of the Corporation at a meeting of such stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and does not further participate in the meeting.

(c) Notice by Electronic Transmission. Notwithstanding Section 2.04(a), a notice may not be given by electronic transmission from and after the time: (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation; and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these Bylaws, except as otherwise limited by applicable law, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such recipient through an automated process. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files or information.

Section 2.05 List of Stockholders. The Corporation shall prepare, at least ten (10) days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *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 (10<sup>th</sup>) day before the meeting date, arranged in alphabetical order and showing the address of each such stockholder and the number of shares registered in the name of each such stockholder. Nothing contained in this section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to 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. In the event the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this [Section 2.05](#) or to vote in person or by proxy at any meeting of stockholders.

Section 2.06 [Quorum](#). The holders of a majority in voting power of the outstanding capital stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by law, by the Certificate of Incorporation or these Bylaws. If a quorum is not present, the chair of the meeting or the holders of a majority of the voting power present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time until a quorum shall be present in person or represented by proxy. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a separate class or series, the holders of a majority in voting power of the outstanding stock of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business. A quorum once established at a meeting shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 2.07 [Adjourned Meetings](#). Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. 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. 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, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and, except as otherwise required by law, shall not be more than sixty (60) days nor less than ten (10) days before the date of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.08 [Vote Required](#). Subject to the rights of the holders of any series of preferred stock then outstanding, when a quorum has been established, all matters other than the election of directors shall be determined by the affirmative vote of the majority of voting power of capital stock present in person or represented by proxy at the meeting and entitled to vote on the subject matter, unless by express provisions of the DGCL or other applicable law, the rules of any stock exchange upon which the Corporation's securities are listed, any regulation applicable to the Corporation or its securities, the Certificate of Incorporation or these Bylaws a minimum or different vote is required, in which case such minimum or different vote shall be the required vote for such matter. Except as otherwise provide in the Certificate of Incorporation, directors shall be elected by a plurality of the votes cast.

Section 2.09 [Voting Rights](#). Subject to the rights of the holders of any series of preferred stock then outstanding, except as otherwise provided by the DGCL or the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote in person or by proxy for each share of capital stock held by such stockholder which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot.

Section 2.10 Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed 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 proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

Section 2.11 Advance Notice of Stockholder Business and Director Nominations.

(a) Business at Annual Meetings of Stockholders.

(i) Only such business (other than nominations of persons for election to the Board of Directors, which must be made in compliance with and are governed exclusively by Section 2.11(b)) shall be conducted at an annual meeting of the stockholders as shall have been brought before the meeting (A) as specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or any duly authorized committee thereof, (B) by or at the direction of the Board of Directors or any duly authorized committee thereof, or (C) by any stockholder of the Corporation who (1) was a stockholder of record at the time of giving of notice provided for in Section 2.11(a)(iii), on the record date for determination of stockholders of the Corporation entitled to vote at the meeting, and at the time of the annual meeting, (2) at the time of the meeting, is entitled to vote at the meeting and (3) complies with the notice procedures set forth in Section 2.11(a)(iii). For the avoidance of doubt, the foregoing clause (C) of this Section 2.11(a)(i) shall be the exclusive means for a stockholder to propose such business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") or business brought by the Principal Stockholder (as defined below) and any entity that controls, is controlled by or under common control with the Principal Stockholder (other than the Corporation and any company that is controlled by the Corporation) and any investment vehicles or funds managed or controlled, directly or indirectly, by or otherwise affiliated with the Principal Stockholder (the "Principal Stockholder Affiliates") at any time prior to the Advance Notice Trigger Date (as defined below)) before an annual meeting of stockholders.

(ii) For any business (other than (A) nominations of persons for election to the Board of Directors, which must be made in compliance with and are governed exclusively by Section 2.11(b) or (B) business brought by any of [Hoya Topco], GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP, GTCR Golder Rauner, L.L.L., GTCR Golder Rounder II, L.L.C., GTCR Management XI LLC and/or GTCR LLC (collectively, the "Principal Stockholder") and the Principal Stockholder Affiliates at any time prior to the date when the Principal Stockholder ceases to beneficially own in the aggregate (directly or indirectly) at least 10% of the voting power of the then outstanding shares of capital stock of the Corporation then entitled to vote generally in the election of directors (the "Advance Notice Trigger Date") to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in proper written form as described in Section 2.11(a)(iii) to the Secretary; any such proposed business must be a proper matter for stockholder action and the stockholder and the Stockholder Associated Person (as defined in Section 2.11(e)) must have acted in accordance with the representations set forth in the Solicitation Statement (as defined in Section 2.11(a)(iii)) required by these Bylaws. To be timely, a stockholder's notice for such business (other than such a notice by the Principal Stockholder prior to the Advance Notice Trigger Date, which may be delivered at any time prior to the mailing of the definitive proxy statement pursuant to Section 14(a) of the Exchange Act related to the next annual meeting of stockholders) must be delivered by hand and received by the Secretary at the principal executive offices of the Corporation in proper written form not less than ninety (90) days and not more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting of stockholders (which date shall, for purposes of the Corporation's first annual meeting of stockholders after its shares of Class A Common Stock (as defined in the Certificate of Incorporation) are first publicly traded, be deemed to have occurred on [●]); *provided, however*, that if and only if the annual meeting is not scheduled to be held within

a period that commences thirty (30) days before such anniversary date and ends thirty (30) days after such anniversary date, or if no annual meeting was held in the preceding year (other than for purposes of the Corporation's first annual meeting of stockholders after its shares of Class A Common Stock are first publicly traded), such stockholder's notice must be delivered by the later of (A) the tenth (10<sup>th</sup>) day following the day the Public Announcement (as defined in [Section 2.11\(e\)](#)) of the date of the annual meeting is first made or (B) the date which is ninety (90) days prior to the date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notices delivered pursuant to [Section 2.11\(a\)](#) will be deemed received on any given day only if received prior to the Close of Business on such day (and otherwise shall be deemed received on the next succeeding Business Day).

(iii) To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter of business the stockholder proposes to bring before the annual meeting:

(A) a brief description of the business desired to be brought before the annual meeting (including the specific text of any resolutions or actions proposed for consideration and if such business includes a proposal to amend these Bylaws, the specific language of the proposed amendment) and the reasons for conducting such business at the annual meeting;

(B) the name and address of the stockholder proposing such business, as they appear on the Corporation's books, the name and address (if different from the Corporation's books) of such proposing stockholder, and the name and address of any Stockholder Associated Person;

(C) the class or series and number of shares of stock of the Corporation which are directly or indirectly held of record or beneficially owned by such stockholder or by any Stockholder Associated Person, a description of any Derivative Positions (as defined in [Section 2.11\(e\)](#)) directly or indirectly held or beneficially held by the stockholder or any Stockholder Associated Person, and whether and to the extent to which a Hedging Transaction (as defined in [Section 2.11\(e\)](#)) has been entered into by or on behalf of such stockholder or any Stockholder Associated Person;

(D) a description of all arrangements or understandings between or among such stockholder or any Stockholder Associated Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder, any Stockholder Associated Person or such other person or entity in such business;

(E) a representation that such stockholder is a stockholder of record of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the annual meeting to bring such business before the meeting;

(F) any other information related to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies or consents (even if a solicitation is not involved) by such stockholder or Stockholder Associated Person in support of the business proposed to be brought before the meeting pursuant to Section 14 of the Exchange Act, and the rules, regulations and schedules promulgated thereunder; and

(G) a representation as to whether such stockholder or any Stockholder Associated Person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to the holders of at least the percentage of the Corporation's outstanding capital stock required to approve the proposal or otherwise to solicit proxies or votes from stockholders in support of the proposal (such representation, a "[Solicitation Statement](#)").

In addition, any stockholder who submits a notice pursuant to [Section 2.11\(a\)](#) is required to update and supplement the information disclosed in such notice, if necessary, in accordance with [Section 2.11\(d\)](#).

(iv) Notwithstanding anything in these Bylaws to the contrary, no business (other than nominations of persons for election to the Board of Directors, which must be made in compliance with and are governed exclusively by [Section 2.11\(b\)](#)) shall be conducted at an annual meeting except in accordance with the procedures set forth in [Section 2.11\(a\)](#).

(b) Nominations at Annual Meetings of Stockholders.

(i) Only persons who are nominated in accordance and compliance with the procedures set forth in this [Section 2.11\(b\)](#) shall be eligible for election to the Board of Directors at an annual meeting of stockholders.

(ii) Nominations of persons for election to the Board of Directors of the Corporation may be made at an annual meeting of stockholders only (A) by or at the direction of the Board of Directors or any duly authorized committee thereof or (B) by any stockholder of the Corporation who (1) was a stockholder of record at the time of giving of notice provided for in this [Section 2.11\(b\)](#) on the record date for determination of stockholders of the Corporation entitled to vote at the meeting, and at the time of the annual meeting, (2) is entitled to vote at the meeting and (3) complies with the notice procedures set forth in this [Section 2.11\(b\)](#). For the avoidance of doubt, clause (A) of this [Section 2.11\(b\)\(ii\)](#) shall be the exclusive means for a stockholder to make nominations of persons for election to the Board of Directors at an annual meeting of stockholders. For nominations to be properly brought by a stockholder at an annual meeting of stockholders, the stockholder must have given timely notice thereof in proper written form as described in [Section 2.11\(b\)\(iii\)](#) to the Secretary and the stockholder and the Stockholder Associated Person must have acted in accordance with the representations set forth in the Nomination Solicitation Statement required by these Bylaws. To be timely, a stockholder's notice for the nomination of persons for election to the Board of Directors (other than such a notice by the Principal Stockholder prior to the Advance Notice Trigger Date, which may be delivered at any time up to thirty-five (35) days prior to the next annual meeting of stockholders) must be delivered to the Secretary at the principal executive offices of the Corporation in proper written form not less than ninety (90) days and not more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting of stockholders (which date shall, for purposes of the Corporation's first annual meeting of stockholders after its shares of Class A Common Stock are first publicly traded, be deemed to have occurred on [●]); *provided, however*, that if and only if the annual meeting is not scheduled to be held within a period that commences thirty (30) days before such anniversary date and ends thirty (30) days after such anniversary date, or if no annual meeting was held in the preceding year (other than for purposes of the Corporation's first annual meeting of stockholders after its shares of Class A Common Stock are first publicly traded), such stockholder's notice must be delivered by the later of the tenth (10<sup>th</sup>) day following the day the Public Announcement of the date of the annual meeting is first made and the date which is ninety (90) days prior to the date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notices delivered pursuant to this [Section 2.11\(b\)](#) will be deemed received on any given day if received prior to the Close of Business on such day (and otherwise on the next succeeding day). For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws.

(iii) To be in proper written form, a stockholder's notice to the Secretary shall set forth:

(A) as to each person that the stockholder proposes to nominate for election or re-election as a director of the Corporation, (1) the name, age, business address and residence address of the person, (2) the principal occupation or employment of the person, (3) the class or series and number of shares of capital stock of the Corporation which are directly or indirectly owned beneficially or of record by the person, (4) the date such shares were acquired and the investment intent of such acquisition and (5) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies or consents for a contested election of directors (even if an election contest or proxy solicitation is not involved), or



is otherwise required, pursuant to Section 14 of the Exchange Act, and the rules, regulations and schedules promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee of the stockholder, if applicable, and to serving as a director if elected);

(B) as to the stockholder giving the notice, the name and address of such stockholder, as they appear on the Corporation's books, the name and address (if different from the Corporation's books) of such proposing stockholder, and the name and address of any Stockholder Associated Person;

(C) the class or series and number of shares of stock of the Corporation which are directly or indirectly held of record or beneficially owned by such stockholder or by any Stockholder Associated Person with respect to the Corporation's securities, a description of any Derivative Positions directly or indirectly held or beneficially held by the stockholder or any Stockholder Associated Person, and whether and the extent to which a Hedging Transaction has been entered into by or on behalf of such stockholder or any Stockholder Associated Person;

(D) a description of all arrangements or understandings (including financial transactions and direct or indirect compensation) between or among such stockholder or any Stockholder Associated Person and each proposed nominee and any other person or entity (including their names) pursuant to which the nomination(s) are to be made by such stockholder;

(E) a representation that such stockholder is a holder of record of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the persons named in its notice;

(F) any other information relating to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies or consents for a contested election of directors (even if an election contest or proxy solicitation is not involved), or otherwise required, pursuant to Section 14 of the Exchange Act, and the rules, regulations and schedules promulgated thereunder; and

(G) a representation as to whether such stockholder or any Stockholder Associated Person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to the holders of a sufficient number of the Corporation's outstanding shares reasonably believed by the stockholder or any Stockholder Associated Person, as the case may be, to elect each proposed nominee or otherwise to solicit proxies or votes from stockholders in support of the nomination (such representation, a "Nomination Solicitation Statement").

In addition, any stockholder who submits a notice pursuant to this [Section 2.11\(b\)](#) is required to update and supplement the information disclosed in such notice, if necessary, in accordance with [Section 2.11\(d\)](#) and shall comply with [Section 2.11\(f\)](#).

(iv) Notwithstanding anything in [Section 2.11\(b\)\(ii\)](#) to the contrary, if the number of directors to be elected to the Board of Directors is increased effective after the time period for which nominations would otherwise be due under [Section 2.11\(b\)\(ii\)](#) and there is no Public Announcement naming the nominees for additional directorships at least ten (10) days prior to the last day a stockholder may deliver a notice of nomination in accordance with [Section 2.11\(b\)\(ii\)](#), a stockholder's notice required by [Section 2.11\(b\)](#) of this [Article II](#) shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the tenth (10<sup>th</sup>) day following the day on which such Public Announcement is first made by the Corporation. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

(c) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the notice of meeting. Only persons who

are nominated in accordance and compliance with the procedures set forth in this [Section 2.11\(c\)](#) shall be eligible for election to the Board of Directors at a special meeting of stockholders at which directors are to be elected. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the notice of meeting only (i) by or at the direction of the Board of Directors, any duly authorized committee thereof, or stockholders (if stockholders are permitted to call a special meeting of stockholders pursuant to Section 7.02 of the Certificate of Incorporation) or (ii) *provided* that the Board of Directors or stockholders (if stockholders are permitted to call a special meeting of stockholders pursuant to Section 7.02 of the Certificate of Incorporation) has determined that directors are to be elected at such special meeting, by any stockholder of the Corporation who (A) was a stockholder of record at the time of giving of notice provided for in this [Section 2.11\(c\)](#) and at the time of the special meeting, (B) is entitled to vote at the meeting and (C) complies with the notice procedures provided for in this [Section 2.11\(c\)](#). For the avoidance of doubt, the foregoing clause (ii) of this [Section 2.11\(c\)](#) shall be the exclusive means for a stockholder to propose nominations of persons for election to the Board of Directors at a special meeting of stockholders at which directors are to be elected. For nominations to be properly brought by a stockholder at a special meeting of stockholders, the stockholder must have given timely notice thereof in proper written form as described in this [Section 2.11\(c\)](#) to the Secretary. To be timely, a stockholder's notice for the nomination of persons for election to the Board of Directors (other than such a notice by the Principal Stockholder prior to the Advance Notice Trigger Date, which may be delivered at any time up to the later of (i) thirty-five (35) days prior to the special meeting of stockholders and (ii) the tenth (10<sup>th</sup>) day following the day on which a Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting) must be received by the Secretary at the principal executive offices of the Corporation not earlier than the 120<sup>th</sup> day prior to such special meeting and not later than the Close of Business on the later of the 90<sup>th</sup> day prior to such special meeting or the tenth (10<sup>th</sup>) day following the day on which a Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notices delivered pursuant to this [Section 2.11\(c\)](#) will be deemed received on any given day if received prior to the Close of Business on such day (and otherwise on the next succeeding day). To be in proper written form, such stockholder's notice shall set forth all of the information required by, and otherwise be in compliance with, [Section 2.11\(b\)\(iii\)](#). In addition, any stockholder who submits a notice pursuant to this [Section 2.11\(c\)](#) is required to update and supplement the information disclosed in such notice, if necessary, in accordance with [Section 2.11\(d\)](#) and shall comply with [Section 2.11\(f\)](#). The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting.

(d) [Update and Supplement of Stockholder's Notice](#). Any stockholder who submits a notice of proposal for business or nomination for election pursuant to this [Section 2.11](#) is required to update and supplement the information disclosed in such notice, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting of stockholders and as of the date that is ten (10) Business Days prior to such meeting of the stockholders or any adjournment or postponement thereof, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the fifth (5<sup>th</sup>) Business Day after the record date for the meeting of stockholders (in the case of the update and supplement required to be made as of the record date), and not later than the Close of Business on the eighth (8<sup>th</sup>) Business Day prior to the date for the meeting of stockholders or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) Business Days prior to the meeting of stockholders or any adjournment or postponement thereof).

(e) Definitions. For purposes of this Section 2.11, the term:

(i) “Business Day” shall mean each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York, NY are authorized or obligated by law or executive order to close;

(ii) “Close of Business” shall mean 5:00 p.m. local time at the principal executive offices of the Corporation, and if an applicable deadline falls on the Close of Business on a day that is not a Business Day, then the applicable deadline shall be deemed to be the Close of Business on the immediately preceding Business Day;

(iii) “Derivative Positions” means, with respect to a stockholder or any Stockholder Associated Person, any derivative positions including, without limitation, any short position, profits interest, option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise and any performance-related fees to which such stockholder or any Stockholder Associated Person is entitled based, directly or indirectly, on any increase or decrease in the value of shares of capital stock of the Corporation;

(iv) “Hedging Transaction” means, with respect to a stockholder or any Stockholder Associated Person, any hedging or other transaction (such as borrowed or loaned shares) or series of transactions, or any other agreement, arrangement or understanding, the effect or intent of which is to increase or decrease the voting power or economic or pecuniary interest of such stockholder or any Stockholder Associated Person with respect to the Corporation’s securities;

(v) “Public Announcement” means disclosure in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act; and

(vi) “Stockholder Associated Person” of any stockholder means (A) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (B) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or (C) any person directly or indirectly controlling, controlled by or under common control with such Stockholder Associated Person.

(f) Submission of Questionnaire, Representation and Agreement. To be qualified to be a nominee for election or re-election as a director of the Corporation, a person must deliver (in the case of a person nominated by a stockholder in accordance with Section 2.11(b) or Section 2.11(c), in accordance with the time periods prescribed for delivery of notice under such sections) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request of any stockholder of record identified by name within five (5) Business Days of such written request) and a written representation and agreement (in the form provided by the Secretary upon written request of any stockholder of record identified by name within five (5) Business Days of such) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein and (iii) would be in compliance, and if elected as a director of the Corporation will

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comply, with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(g) Update and Supplement of Nominee Information. The Corporation may also, as a condition to any such nomination or business being deemed properly brought before an annual meeting, require any Stockholder Associated Person or proposed nominee to deliver to the Secretary, within five (5) Business Days of any such request, such other information as may reasonably be requested by the Corporation, including such other information as may be reasonably required by the Board, in its sole discretion, to determine (A) the eligibility of such proposed nominee to serve as a director of the Corporation, (B) whether such nominee qualifies as an “independent director” or “audit committee financial expert” under applicable law, Securities and Exchange Commission and stock exchange rules or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (C) such other information that the Board of Directors determines could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such nominee.

(h) Authority of Chair; General Provisions. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the chair of the meeting shall have the power and duty to determine whether any nomination or other business proposed to be brought before the meeting was made or brought in accordance with the procedures set forth in these Bylaws (including whether the stockholder or Stockholder Associated Person, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder’s nominee or proposal in compliance with such stockholder’s representation as required by Section 2.11(a)(iii)(G) or Section 2.11(b)(iii)(G), as applicable, of these Bylaws) and, if any nomination or other business is not made or brought in compliance with these Bylaws, to declare that such nomination or proposal of other business be disregarded and not acted upon. Notwithstanding the foregoing provisions of this Section 2.11, 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, 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 2.11, 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) Compliance with Exchange Act. Notwithstanding the foregoing provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules, regulations and schedules promulgated thereunder with respect to the matters set forth in these Bylaws; *provided, however*, that any references in these Bylaws to the Exchange Act or the rules, regulations and schedules promulgated thereunder are not intended to and shall not limit the requirements applicable to any nomination or other business to be considered pursuant to Section 2.11.

(j) Effect on Other Rights. Nothing in these Bylaws shall be deemed to (A) affect any rights of the stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act, (B) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation’s proxy statement, except as set forth in the Certificate of Incorporation or these Bylaws, (C) affect any rights of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation or (D) limit the exercise, the method or timing of the exercise of, the rights of any person granted by the Corporation to nominate directors (including pursuant to that Stockholders’ Agreement, dated as of on or about [●], by and among the Corporation and the investors named therein (the “Stockholders’ Agreement”)), which rights may be exercised without compliance with the provisions of this Section 2.11.

**Section 2.12 Fixing a Record Date for Stockholder Meetings.** 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 not be more than sixty (60) days 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 the close of business on the next day preceding the day on which notice is first given, or, if notice is waived, at the close of business on the day next 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 adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting in conformity herewith; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 2.12 at the adjourned meeting.

**Section 2.13 Action by Stockholders Without a Meeting.** So long as stockholders of the Corporation have the right to act by written consent in accordance with Section 7.01 of the Certificate of Incorporation, the following provisions shall apply:

(a) **Record Date.** For the purpose of determining the stockholders entitled to consent to corporate action without a meeting as may be permitted by the Certificate of Incorporation or the certificate of designation relating to any outstanding class or series of preferred stock, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) (or the maximum number permitted by applicable law) days after the date on which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take action by written consent shall, by written notice delivered to the Secretary at the Corporation's principal place of business during regular business hours, request that the Board of Directors fix a record date, which notice shall include the text of any proposed resolutions. Notices delivered pursuant to Section 2.13(a) will be deemed received on any given day only if received prior to the close of business on such day (and otherwise shall be deemed received on the next succeeding business day). The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such written notice is properly delivered to and deemed received by the Secretary, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 2.13(a)). If no record date has been fixed by the Board of Directors pursuant to this Section 2.13(a) or otherwise within ten (10) days of receipt of a valid request by a stockholder, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board of Directors is required pursuant to applicable law, shall be the first date after the expiration of such ten (10) day time period on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation pursuant to Section 2.13(b); *provided, however*, that if prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action without a meeting shall in such an event be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(b) **Generally.** No consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation, in the manner required by this Section 2.13, within sixty (60) (or the maximum number permitted by applicable law) days of the first date on which a consent is delivered to the Corporation in the manner required by applicable law. The validity of any consent executed by a proxy for a stockholder pursuant to an electronic transmission transmitted to such proxy holder by or upon the authorization of the stockholder shall be determined by or at the direction of the Secretary. A written record of the information upon which the person making such determination

relied shall be made and kept in the records of the proceedings of the stockholders. Any such consent shall be inserted in the minute book as if it were the minutes of a meeting of stockholders. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given by the Corporation (at its expense) to those stockholders who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

Section 2.14 Conduct of Meetings.

(a) Generally. Meetings of stockholders shall be presided over by the Chair of the Board, if any, or in the Chair's absence or disability, by the Chief Executive Officer, or in the Chief Executive Officer's absence or disability, by the President, or in the President's absence or disability, by a Vice President (in the order as determined by the Board of Directors), or in the absence or disability of the foregoing persons by a chair designated by the Board of Directors, or in the absence or disability of such person, by a chair chosen at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence or disability the chair of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chair of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, 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 chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; and (vi) restrictions on the use of mobile phones, audio or video recording devices and similar devices at the meeting. The chair 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 or business was not properly brought before the meeting and if such chair should so determine, such chair 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 chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The chair of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted. The chair of the meeting shall have the power, right and authority, for any or no reason, to convene, recess and/or adjourn any meeting of stockholders.

(c) Inspectors of Elections. The Corporation may, and to the extent required by law shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chair of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. No person who is a candidate for an office at an election may serve as an inspector at such election. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and, when

the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

Section 2.15 Remote Communication. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication; *provided that* (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

### ARTICLE III. DIRECTORS

Section 3.01 General Powers. Except as otherwise provided in this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 3.02 Annual Meetings. The annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of stockholders. In the event that the annual meeting of stockholders takes place telephonically or through any other means by which the stockholders do not convene in any one location, the annual meeting of the Board of Directors shall be held at the principal offices of the Corporation immediately after the annual meeting of the stockholders.

Section 3.03 Regular Meetings and Special Meetings. Regular meetings, other than the annual meeting, of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors and publicized among all directors. Special meetings of the Board of Directors may be called by (i) the Chair of the Board, if any, (ii) by the Secretary upon the written request of a majority of the directors then in office or (iii) if the Board of Directors then includes a director nominated or designated for nomination by the Principal Stockholder, by any director nominated or designated for nomination by the Principal Stockholder, or (iv) if the Board of Directors then includes a director nominated or designated for nomination by Horizon Sponsor, LLC, by any director nominated or designated by Horizon Sponsor, LLC, and in each case shall be held at the place, if any, on the date and at the time as he, she or they shall fix. Any and all business may be transacted at a special meeting of the Board of Directors.

Section 3.04 Notice of Meetings. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by law or these Bylaws. Notice of each special meeting of the Board of Directors, and of each regular and annual meeting of the Board of Directors for which notice is required, shall be given by the Secretary as hereinafter provided in this Section 3.04. Such notice shall state the date, time and place, if any, of the meeting. Notice of any special meeting, and of any regular or annual meeting for which notice is required, shall be given to each director at least (a) twenty-four (24) hours before the meeting if by telephone or by being personally delivered or sent by overnight courier, telecopy, electronic transmission, email or similar means or (b) five (5) days before the meeting if delivered by mail to the director's residence or usual place of business. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage



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prepaid, or when transmitted if sent by telex, telecopy, electronic transmission, email or similar means. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.05 Waiver of Notice. Any director may waive notice of any meeting of directors by a writing signed by the director or by electronic transmission. Any member of the Board of Directors or any committee thereof who is present at a meeting shall have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and does not further participate in the meeting. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 3.06 Chair of the Board, Quorum, Required Vote and Adjournment. The Board of Directors may elect a Chair of the Board. The Chair of the Board must be a director and may be an officer of the Corporation. Subject to the provisions of these Bylaws and the direction of the Board of Directors, the Chair of the Board shall perform all duties and have all powers which are commonly incident to the position of Chair of the Board or which are delegated to him or her by the Board of Directors, preside at all meetings of the stockholders and Board of Directors at which he or she is present and have such powers and perform such duties as the Board of Directors may from time to time prescribe. If the Chair of the Board is not present at a meeting of the Board of Directors, the Chief Executive Officer (if the Chief Executive Officer is a director and is not also the Chair of the Board) shall preside at such meeting, and, if the Chief Executive Officer is not present at such meeting, a majority of the directors present at such meeting shall elect one of the directors present at the meeting to so preside. At all meetings of the Board of Directors, a majority of the directors then in office shall constitute a quorum for the transaction of business; *provided, however*, that a quorum shall never be less than one-third the total number of directors. Unless by express provision of an applicable law, the Certificate of Incorporation or these Bylaws a different vote is required, the vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may, to the fullest extent permitted by law, adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

### Section 3.07 Committees.

(a) The Board of Directors may designate one or more committees, including an executive committee, consisting of one or more of the directors of the Corporation, and any committees required by the rules and regulations of such exchange as any securities of the Corporation are listed. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Except to the extent restricted by applicable law or the Certificate of Incorporation, each such committee, to the extent provided by the DGCL and in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors. Each such committee shall serve at the pleasure of the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

(b) Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. All matters shall be determined by a majority vote of the members present at a meeting at which a quorum is present. Unless



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otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors, of such committee is or are absent or disqualified, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 3.08 Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the board or committee in the same paper form or electronic form as the minutes are maintained.

Section 3.09 Compensation. The Board of Directors shall have the authority to fix the compensation, including fees, reimbursement of expenses and equity compensation, of directors for services to the Corporation in any capacity, including for attendance of meetings of the Board of Directors or participation on any committees. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.10 Reliance on Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such member's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 3.11 Telephonic and Other Meetings. Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE IV. OFFICERS

Section 4.01 Number and Election. Subject to the authority of the Chief Executive Officer to appoint officers as set forth in Section 4.11, the officers of the Corporation shall be elected by the Board of Directors and shall consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, a Chief Financial Officer, a Treasurer and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable.

Section 4.02 Term of Office. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 4.03 Removal. Any officer or agent of the Corporation may be removed with or without cause by the Board of Directors, a duly authorized committee thereof or by such officers as may be designated by a resolution of the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer appointed by the Chief Executive Officer in accordance with Section 4.11 may also be removed by the Chief Executive Officer in his or her sole discretion.

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Section 4.04 Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors or the Chief Executive Officer in accordance with Section 4.11.

Section 4.05 Compensation. Compensation of all executive officers shall be approved by the Board of Directors or a duly authorized committee thereof, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation.

Section 4.06 Chief Executive Officer. The Chief Executive Officer shall have the powers and perform the duties incident to that position. The Chief Executive Officer shall, in the absence of the Chair of the Board, or if a Chair of the Board shall not have been elected, preside at each meeting of (a) the Board of Directors if the Chief Executive Officer is a director and (b) the stockholders. Subject to the powers of the Board of Directors and the Chair of the Board, the Chief Executive Officer shall be in general and active charge of the entire business and affairs of the Corporation, and shall be its chief policy making officer. The Chief Executive Officer shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or provided in these Bylaws. The Chief Executive Officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. Whenever the President is unable to serve, by reason of sickness, absence or otherwise, the Chief Executive Officer shall perform all the duties and responsibilities and exercise all the powers of the President.

Section 4.07 The President. The President of the Corporation shall, subject to the powers of the Board of Directors, the Chair of the Board and the Chief Executive Officer, have general charge of the business, affairs and property of the Corporation, and control over its officers, agents and employees. The President shall see that all orders and resolutions of the Board of Directors are carried into effect. The President is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall, in the absence of the Chief Executive Officer, act with all of the powers and be subject to all of the restrictions of the Chief Executive Officer. The President shall have such other powers and perform such other duties as may be prescribed by the Chair of the Board, the Chief Executive Officer, the Board of Directors or as may be provided in these Bylaws or otherwise are incident to the position of President.

Section 4.08 Vice Presidents. The Vice President, or if there shall be more than one, the Vice Presidents, in the order determined by the Board of Directors or the Chair of the Board, shall, perform such duties and have such powers as the Board of Directors, the Chair of the Board, the Chief Executive Officer, the President or these Bylaws may, from time to time, prescribe or which otherwise are incident to the position of Vice President. The Vice Presidents may also be designated as Executive Vice Presidents or Senior Vice Presidents, as the Board of Directors may from time to time prescribe.

Section 4.09 The Secretary and Assistant Secretaries. The Secretary shall attend all meetings of the Board of Directors (other than executive sessions thereof) and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. Under the Board of Directors' supervision, the Secretary shall give, or cause to be given, all notices required to be given by these Bylaws or by law; shall have such powers and perform such duties as the Board of Directors, the Chair of the Board, the Chief Executive Officer, the President or these Bylaws may, from time to time, prescribe or which otherwise are incident to the position of Secretary; and shall have custody of the corporate seal of the Corporation. The Secretary, or an Assistant Secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature.

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The Assistant Secretary, or if there be more than one, any of the assistant secretaries, shall in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chair of the Board, the Chief Executive Officer, the President, or Secretary may, from time to time, prescribe.

Section 4.10 The Chief Financial Officer and the Treasurer. The Chief Financial Officer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the Chair of the Board or the Board of Directors; shall receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the financial condition and operations of the Corporation; shall have such powers and perform such duties as the Board of Directors, the Chair of the Board, the Chief Executive Officer, the President or these Bylaws may, from time to time, prescribe or which otherwise are incident to the position of Chief Financial Officer. The Treasurer, if any, shall in the absence or disability of the Chief Financial Officer, perform the duties and exercise the powers of the chief financial officer, subject to the power of the board of directors. The Treasurer, if any, shall perform such other duties and have such other powers as the board of directors may, from time to time, prescribe.

Section 4.11 Appointed Officers. In addition to officers designated by the Board in accordance with this Article IV, the Chief Executive Officer shall have the authority to appoint other officers below the level of Board-appointed Vice President as the Chief Executive Officer may from time to time deem expedient and may designate for such officers titles that appropriately reflect their positions and responsibilities. Such appointed officers shall have such powers and shall perform such duties as may be assigned to them by the Chief Executive Officer or the senior officer to whom they report, consistent with corporate policies. An appointed officer shall serve until the earlier of such officer's resignation or such officer's removal by the Chief Executive Officer or the Board of Directors at any time, either with or without cause.

Section 4.12 Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 4.13 Officers' Bonds or Other Security. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety as the Board of Directors may require.

Section 4.14 Delegation of Authority. The Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

## ARTICLE V. CERTIFICATES OF STOCK

Section 5.01 Form. The shares of stock of the Corporation shall be represented by certificates; *provided that*, the Board of Directors may provide by resolution that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. If shares are represented by certificates, the certificates shall be in such form as required by applicable law and as determined by the Board of Directors. Each certificate shall certify the number of shares owned by such holder in the Corporation and shall be signed by, or in the name of

the Corporation by two authorized officers of the Corporation including, but not limited to, the Chair of the Board (if an officer), the President, a Vice President, the Chief Financial Officer, the Treasurer, the Secretary and an Assistant Secretary of the Corporation. Any or all signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the Corporation whether because of death, resignation or otherwise before such certificate or certificates have been issued by the Corporation, such certificate or certificates may nevertheless be issued as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the Corporation at the date of issue. All certificates for shares shall be consecutively numbered or otherwise identified. The Board of Directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the Corporation. The Corporation, or its designated transfer agent or other agent, shall keep a book or set of books to be known as the stock transfer books of the Corporation, containing the name of each holder of record, together with such holder's address and the number and class or series of shares held by such holder and the date of issue. When shares are represented by certificates, the Corporation shall issue and deliver to each holder to whom such shares have been issued or transferred, certificates representing the shares owned by such holder, and shares of stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation or its designated transfer agent or other agent of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. When shares are not represented by certificates, shares of stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, with such evidence of the authenticity of such transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps, and within a reasonable time after the issuance or transfer of such shares, the Corporation shall, if required by applicable law, send the holder to whom such shares have been issued or transferred a written statement of the information required by applicable law. Unless otherwise provided by applicable law, the Certificate of Incorporation, Bylaws or any other instrument, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 5.02 Lost Certificates. The Corporation may issue or direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the owner of the lost, stolen or destroyed certificate. When authorizing such issue of a new certificate or certificates or uncertificated shares, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to give the Corporation a bond in such sum as it may direct, sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.03 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner, except as otherwise required by applicable law. The Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by applicable law.

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Section 5.04 Fixing a Record Date for Purposes Other Than Stockholder Meetings or Actions by Written Consent. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action (other than stockholder meetings and stockholder written consents which are expressly governed by Section 2.12 and Section 2.13 hereof), 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, and which record date shall be not more than sixty (60) days prior to such action. If no 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.

## ARTICLE VI. GENERAL PROVISIONS

Section 6.01 Dividends. Subject to and in accordance with applicable law, the Certificate of Incorporation and any certificate of designation relating to any series of preferred stock, dividends upon the shares of capital stock of the Corporation may be declared and paid by the Board of Directors, in accordance with applicable law. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock, subject to the provisions of applicable law and the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends a reserve or reserves for any proper purpose. The Board of Directors may modify or abolish any such reserves in the manner in which they were created.

Section 6.02 Checks, Notes, Drafts, Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 6.03 Contracts. In addition to the powers otherwise granted to officers pursuant to Article IV hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, in the name and on behalf of the Corporation to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

Section 6.04 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 6.05 Corporate Seal. The Board of Directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. Notwithstanding the foregoing, no seal shall be required by virtue of this Section.

Section 6.06 Voting Securities Owned By Corporation. Voting securities in any other corporation or entity held by the Corporation shall be voted by the Chair of the Board, Chief Executive Officer, the President or the Chief Financial Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 6.07 Facsimile/Electronic Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws and subject to applicable law, facsimile and other forms of electronic signatures of any officer or officers of the Corporation may be used.

Section 6.08 Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

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Section 6.09 Inconsistent Provisions. In the event that any provision (or part thereof) of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL, any other applicable law or the Stockholders' Agreement, the provision (or part thereof) of these Bylaws shall be construed and deemed to have been revised to conform to the applicable provision of the Certificate of Incorporation, the DGCL, other applicable law or the Stockholders' Agreement, as the case may be, the applicable provisions of which shall be deemed incorporated herein by reference so as to eliminate any such inconsistency.

### ARTICLE VII. INDEMNIFICATION

Section 7.01 Right to Indemnification and Advancement. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized 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 permitted prior thereto), against all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA") and any other penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; *provided, however*, that, except as provided in this Section 7.02 with respect to proceedings to enforce rights to indemnification and advance of expenses (as defined below), the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized in the specific case by the Board of Directors of the Corporation. In addition to the right to indemnification conferred herein, an indemnitee shall also have the right, to the fullest extent not prohibited by law, to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (an "advance of expenses"); *provided, however*, that if and to the extent that the DGCL requires, an advance of expenses shall be made only upon delivery to the Corporation of an undertaking (an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 7.01 or otherwise. The Corporation may also, by action of its Board of Directors, provide indemnification and advancement to employees and agents of the Corporation. Any reference to an officer of the Corporation in this Article VII shall be deemed to refer exclusively to the Chair of the Board of Directors, Chief Executive Officer, President, Secretary and Treasurer of the Corporation appointed pursuant to Article IV, and to any Vice President, Assistant Secretary, Assistant Treasurer or other officer of the Corporation appointed by the Board of Directors pursuant to Article IV of these By-laws, and any reference to an officer of any other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors or equivalent governing body of such other entity pursuant to the certificate of incorporation and bylaws or equivalent organizational documents of such other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other enterprise has been given or has used the title of "Vice President" or any other title that could be construed to suggest or imply that such person is or may be an officer of the Corporation or of such other enterprise shall not result in such person being constituted as, or being deemed to be, an officer of the Corporation or of such other enterprise for purposes of this Article VII unless such person's appointment to such office was approved by the board of directors pursuant to Article VII.

Section 7.02 Procedure for Indemnification. Any claim for indemnification or advance of expenses by an indemnitee under this Section 7.02 shall be made promptly, and in any event within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days; *provided* that the director or officer has delivered the undertaking contemplated by Section 7.01 if required), upon the written request of the indemnitee. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days; *provided* that the indemnitee has delivered the undertaking contemplated by Section 7.01 if required), the right to indemnification or advances as granted by this Article VII shall be enforceable by the indemnitee in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation to the fullest extent permitted by applicable law. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 7.01, if any, has been tendered to the Corporation) that the claimant has not met the applicable standard of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proof shall be on the Corporation to the fullest extent permitted by law. Neither the failure of the Corporation (including its Board of Directors, a committee thereof, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 7.03 Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the DGCL.

Section 7.04 Service for Subsidiaries. Any person serving as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, at least 50% of whose equity interests are owned by the Corporation (a "subsidiary" for purposes of this Article VII) shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

Section 7.05 Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this Article VII in entering into or continuing such service. To the fullest extent permitted by law, the rights to indemnification and to the advance of expenses conferred in this Article VII shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 7.06 Non-Exclusivity of Rights; Continuation of Rights of Indemnification. The rights to indemnification and to the advancement and payment of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation or under any statute, by-law, agreement, vote of stockholders or disinterested directors or

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otherwise. Notwithstanding the existence of any of the foregoing rights, the Corporation (a) is the indemnitor of first resort (i.e., the Corporation's obligations to any indemnitee under these Bylaws are primary and any duplicative, overlapping or corresponding obligations of any other party are secondary), (b) shall be required to make all advances of expenses and other payments required under this Article VII, and shall be fully liable therefor, without regard to any rights any indemnitee may have against any affiliate or associate of such indemnitee and (c) irrevocably waives, relinquishes and releases all affiliates and associates of such indemnitee for contribution, subrogation or any other recovery of any kind in respect thereof. All rights to indemnification under this Article VII shall be deemed to be a contract between the Corporation and each person who is an indemnitee under this Article VII at any time while this Article VII is in effect. Any repeal or modification of this Article VII or repeal or modification of relevant provisions of the DGCL or any other applicable laws shall not in any way diminish any rights to indemnification and advancement of expenses of such director or officer or the obligations of the Corporation arising hereunder with respect to any proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such repeal or modification.

Section 7.07 Merger or Consolidation. For purposes of this Article VII, 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 Article VII 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 7.08 Savings Clause. To the fullest extent permitted by law, if this Article VII 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 7.01 as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties and any other penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification and advancement of expenses is available to such person pursuant to this Article VII to the fullest extent permitted by any applicable portion of this Article VII that shall not have been invalidated.

## ARTICLE VIII. AMENDMENTS

These Bylaws may be amended, altered, changed or repealed or new Bylaws adopted only in accordance with Section 10.01 of the Certificate of Incorporation.



## STOCKHOLDERS' AGREEMENT

This Stockholders' Agreement (this "Agreement") is made as of [●], by and among:

(i) Vivid Seats Inc., a Delaware corporation (the "Company");

(ii) Hoya Topco, LLC, a Delaware limited liability company ("Topco"); and

(iii) Horizon Sponsor, LLC, a Delaware limited liability company ("Horizon" and, together with Topco, each a "Voting Party" and together the "Voting Parties").

## RECITALS

**WHEREAS**, the Company has entered into that certain Transaction Agreement, dated as of April 21, 2021 (as it may be amended or supplemented from time to time, the "Transaction Agreement"), by and among the Company, the Voting Parties, Hoya Intermediate, LLC, a Delaware limited liability company, and Horizon Acquisition Corporation, a Cayman Islands exempted company ("Horizon Corp"), pursuant to which the parties thereto have agreed to consummate the Transactions (as defined in the Transaction Agreement);

**WHEREAS**, in connection with the Transactions, the Company and the Voting Parties are party to a Registration Rights Agreement, dated as of the date hereof (as it may be amended, supplemented, restated and/or modified from time to time, the "Registration Rights Agreement");

**WHEREAS**, in connection with the Transactions, the Voting Parties have agreed to execute and deliver this Agreement;

**WHEREAS**, as of immediately following the closing of the Transaction (the "Closing") each Voting Party Beneficially Owns (as defined below) the respective number of shares of Class A common stock of the Company, par value \$0.0001 per share (the "Class A Common Stock") and Class B common stock of the Company, par value \$0.0001 per share (the "Class B Common Stock" and together with the Class A Common Stock, the "Common Stock"), set forth on Annex A hereto;

**WHEREAS**, the number of shares of Common Stock Beneficially Owned (as defined below) by each Voting Party may change from time to time, in accordance with the terms of (x) the Amended and Restated Certificate of Incorporation of the Company, as it may be amended, supplemented and/or restated from time to time (the "Charter"), (y) the Amended and Restated Bylaws of the Company, as it may be amended, supplemented and/or restated from time to time (the "Bylaws") and (z) the Registration Rights Agreement, which changes shall be reported by each Voting Party in accordance with the applicable provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

**WHEREAS**, as of the date of this Agreement, Topco Beneficially Owns shares of Common Stock representing more than fifty percent (50%) of the outstanding voting power of the Company;

**WHEREAS**, each Voting Party believes that it is in their respective best interests to qualify the Company as a "controlled company" under the listing standards of NYSE; and

**WHEREAS**, the parties hereto desire to enter into this Agreement to provide for certain nomination rights with respect to elections of the Company's Board of Directors (the "Board") and restrictions on transfers of the Common Stock.

**NOW THEREFORE**, in consideration of the foregoing and of the promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

1. Definitions. Capitalized terms used herein but not defined in this Agreement shall have the meanings ascribed to them in the Transaction Agreement. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings indicated when used in this Agreement with initial capital letters:

“Affiliate” shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

“Agreement” shall have the meaning specified in the Preamble.

“Beneficially Owned” or “Beneficial Ownership” shall have the meaning specified in Section 2.

“Board” shall have the meaning specified in the Recitals.

“Bylaws” shall have the meaning specified in the Recitals.

“Charter” shall have the meaning specified in the Recitals.

“Class A Common Stock” shall have the meaning specified in the Recitals.

“Class B Common Stock” shall have the meaning specified in the Recitals.

“Closing” shall have the meaning specified in the Recitals.

“Closing Amount” means the aggregate number of shares of Common Stock that are issued and outstanding on the date hereof, as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company’s capitalization. For the avoidance of doubt, the Common Stock issued in connection with the PIPE Subscription shall be included with the Closing Amount.

“Closing Date” shall have the meaning given in the Transaction Agreement.

“Common Stock” shall have the meaning specified in the Recitals.

“Company” shall have the meaning specified in the Preamble.

“Exchange Act” shall have the meaning specified in the Recitals.

“Horizon” shall have the meaning specified in the Preamble.

“Horizon Designees” shall have the meaning specified in Section 3(a).

“Horizon Equityholders” shall mean Horizon and any investment vehicles or funds managed or controlled, directly or indirectly, by any of Horizon’s Affiliates.

“Horizon Sunset Date” means the date the Horizon Equityholders, in the aggregate, Beneficially Own a number of Voting Shares representing less than five percent (5%) of the Original Amount.

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“Horizon Transferee” shall have the meaning specified in Section 15(b).

“Lock-up” shall have the meaning specified in Section 7(a).

“Lock-up Period” shall mean the period beginning on the Closing Date and ending twelve (12) months following the Closing Date.

“Lock-up Shares” shall mean (i) any shares of Common Stock Beneficially Owned by the Topco Equityholders and the Horizon Equityholders, other than, with respect to the Horizon Equityholders, the Common Stock received in connection with the PIPE Subscription (as defined in the Transaction Agreement) and (ii) any warrants Beneficially Owned by the Topco Equityholders and the Horizon Equityholders that are exercisable for shares of Common Stock.

“Necessary Action” means, with respect to any party and a specified result, all actions (to the extent such actions are not prohibited by applicable law, within such party’s control and do not directly conflict with any rights expressly granted to such party in this Agreement, the Transaction Agreement, the Registration Rights Agreement, the Charter or the Bylaws) reasonably necessary and desirable within his, her or its control to cause such result, including, without limitation (i) calling special meetings of the Board and the stockholders of the Company, (ii) voting or providing a proxy with respect to the Voting Shares beneficially owned by such party, (iii) voting in favor of the adoption of stockholders’ resolutions and amendments to the Charter or Bylaws, including executing written consents in lieu of meetings, (iv) requesting members of the Board (to the extent such members were elected, nominated or designated by the party obligated to undertake such action) to act (subject to any applicable fiduciary duties) in a certain manner or causing them to be removed in the event they do not act in such a manner and (v) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such a result.

“NYSE” means the New York Stock Exchange.

“Original Amount” means the aggregate number of shares of Common Stock held, directly or indirectly, by the Topco Equityholders (with respect to any calculation of Common Stock held by the Topco Equityholders) or the Horizon Equityholders (with respect to any calculation of Common Stock held by the Horizon Equityholders) on the date hereof, as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company’s capitalization. For the avoidance of doubt, the Common Stock received by the Horizon Equityholders in connection with the PIPE Subscription shall be included with the Original Amount.

“Permitted Transferees” shall have the meaning specified in Section 7(b).

“Registration Agreement” shall have the meaning specified in the Recitals.

“Representatives” shall have the meaning specified in Section 8.

“Topco Equityholders” shall mean (a) Topco or (b) after the distribution (in the aggregate pursuant to one or more distributions) by Topco of more than 50% of the Voting Shares held by Topco on the date hereof, (i) GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP, GTCR Golder Rauner, L.L.C., GTCR Golder Rauner II, L.L.C., GTCR Management XI LLC and/or GTCR LLC and (ii) any investment vehicles or funds managed or controlled, directly or indirectly, by or otherwise affiliated with the foregoing entities.

“Topco Sunset Date” means the date the Topco Equityholders, in the aggregate, Beneficially Own a number of Voting Shares representing less than five percent (5%) of the Original Amount (assuming, for this purpose, that all outstanding Intermediate Common Units (as defined in the Transaction Agreement) held or controlled by the Topco Equityholders are and were exchanged at the applicable times of measurement by the Topco Equityholders for shares of Class A Common Stock in accordance with the A&R LLCA and without regard to the Lock-Up or any other restriction on exchange).

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“Topco Transferee” shall have the meaning specified in Section 15(b).

“Transaction Agreement” shall have the meaning specified in the Recitals.

“Transfer” means the (a) sale of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

“Voting Party” or “Voting Parties” shall have the meaning specified in the Preamble.

“Voting Shares” shall have the meaning specified in Section 2.

2. Agreement to Vote. During the term of this Agreement, each Voting Party shall vote or cause to be voted all securities of the Company that may be voted in the election of the Company’s directors registered in the name of, or beneficially owned (as such term is defined in Rule 13d-3 under the Exchange Act, including by the exercise or conversion of any security exercisable or convertible for shares of Common Stock, but excluding shares of stock underlying unexercised options or warrants) (“Beneficially Owned” or “Beneficial Ownership”) by such Voting Party, including any and all securities of the Company acquired and held in such capacity subsequent to the date hereof (hereinafter referred to as the “Voting Shares”), in accordance with the provisions of this Agreement, including voting or causing to be voted all Voting Shares Beneficially Owned by such Voting Party so that the Board is comprised of the Persons designated pursuant to Section 3(a). Except as explicitly provided in this Agreement, each Voting Party is free to vote or cause to be voted all Voting Shares Beneficially Owned by such Voting Party. For the avoidance of doubt, nothing in this Section 2 shall require a Voting Party to exercise or convert any security exercisable or convertible for voting securities of the Company.

### 3. Board of Directors.

(a) Board Representation. Subject to the terms and conditions of this Agreement, from the date of this Agreement, the Company and each Voting Party shall take all Necessary Action to cause, effective immediately following the Closing Date, the Board to be comprised of nine (9) directors, comprised of (i) the chief executive officer of the Company, (ii) five (5) directors designated by the Topco Equityholders (the “Topco Designees” and each a “Topco Designee”), of which at least one (1) shall qualify as an “independent director” under stock exchange regulations applicable to the Company and (iii) three (3) director designated by the Horizon Equityholders (the “Horizon Designees”), of which at least two (2) shall qualify as “independent directors” under stock exchange regulations applicable to the Company. From the Closing Date, the Horizon Equityholders shall have the right, but not the obligation, to nominate (I) three (3) Horizon Designees, so long as the Horizon Equityholders, in the aggregate, Beneficially Own at least 12% of the Closing Amount, of which at least two (2) shall qualify as “independent directors” under stock exchange regulations applicable to the Company, (II) two (2) Horizon Designees, so long as the Horizon Equityholders, in the aggregate, Beneficially Own at least 6% but less than 12% of the Closing Amount, each of which shall qualify as “independent directors” under stock exchange regulations applicable to the Company, and (III) until the Horizon Sunset Date, one (1) Horizon Designee, who shall qualify as an “independent director” under stock exchange regulations applicable to the Company; provided that, the loss of the right to designate the Horizon Designee pursuant to this Section 3(a) shall not shorten the term of such Horizon Designee then-serving on the Board. From the Closing Date, the Topco Equityholders shall have the right, but not the obligation, to nominate (A) five (5) Topco Designees, so long as the Topco Equityholders, in the aggregate, Beneficially Own at least 24% of the Closing Amount, of which at least one (1) shall qualify as an “independent director” under stock exchange regulations applicable to

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the Company, (B) four (4) Topco Designees, so long as the Topco Equityholders, in the aggregate, Beneficially Own at least 18% but less than 24% of the Closing Amount, (C) three (3) Topco Designees, so long as the Topco Equityholders, in the aggregate, Beneficially Own at least 12% but less than 18% of the Closing Amount, (D) two (2) Topco Designees, so long as the Topco Equityholders, in the aggregate, Beneficially Own at least 6% but less than 12% of the Closing Amount and (E) until the Topco Sunset Date, one (1) Topco Designee; provided that, no reduction in the number of Topco Designees that the Topco Equityholders are entitled to designate pursuant to this Section 3(a) shall shorten the term of any Topco Designee then-serving on the Board; provided further that, once the Topco Equityholders, in the aggregate, Beneficially Own less than 40% of the Closing Amount, none of the Topco Designees shall be required to qualify as “independent directors” under any stock exchange regulations. In the event the size of the Board is increased in accordance with applicable law and the Company’s organizational documents, the Topco Equityholders shall have the right to designate a number of directors of the Board which give the Topco Equityholders the same percentage of total directors on the Board as permitted to be designated pursuant to this Section 3(a), rounded up to the next whole number.

(b) Sunset on Designees. From the date of this Agreement until the Topco Sunset Date, the Company shall, and the Voting Parties shall take all Necessary Action to, include the Topco Designees in the slate of nominees recommended by the Board for election as directors at each applicable annual or special meeting of the stockholders of the Company, including at every adjournment or postponement thereof, at which directors are to be elected. From the date of this Agreement until the Horizon Sunset Date, the Company shall, and the Voting Parties shall take all Necessary Action to, include the Horizon Designees in the slate of nominees recommended by the Board for election as directors at each applicable annual or special meeting of the stockholders of the Company, including at every adjournment or postponement thereof, at which directors are to be elected. Once the Topco Equityholders and Horizon Equityholders, as applicable, lose the right to nominate a director in accordance with Section 3(a) above, the selection of such director shall be conducted in accordance with applicable law and with the Charter, Bylaws and the other corporate governance documents of the Company.

(c) Resignation; Removal; Vacancies.

(i) Any Topco Designee or Horizon Designee may resign at any time upon written notice to the Board.

(ii) (A) The Topco Equityholders shall have the exclusive right to remove one or more of the Topco Designees from the Board, and the Company and the Voting Parties shall take all Necessary Action to cause the removal of any such Topco Designee(s) at the written request of the Topco Equityholders and (B) the Topco Equityholders shall have the exclusive right, in accordance with Section 3(a), to designate directors for election to the Board to fill any vacancies created by reason of death, removal or resignation of the Topco Designees, and the Company and the Voting Parties shall take all Necessary Action to cause any such vacancies to be filled by replacement Topco Designees as promptly as reasonably practicable.

(iii) (A) The Horizon Equityholders shall have the exclusive right to remove the Horizon Designee from the Board, and the Company and the Voting Parties shall take all Necessary Action to cause the removal the Horizon Designee at the written request of the Horizon Equityholders and (B) the Horizon Equityholders shall have the exclusive right, in accordance with Section 3(a), to designate a director for election to the Board to fill any vacancy created by reason of death, removal or resignation of the Horizon Designee, and the Company and the Voting Parties shall take all Necessary Action to cause any such vacancy to be filled by a replacement Horizon Designee as promptly as reasonably practicable.

(d) Committees. Until the Topco Sunset Date, the Topco Equityholders shall have the right to designate a number of members of each committee of the Board equal to the nearest whole number greater than the product obtained by multiplying (a) the percentage of the total voting power of the then outstanding Common Stock then Beneficially Owned by the Topco Equityholders and (b) the number of positions, including any vacancies, on the applicable committee, provided that any such designee shall be eligible to serve on the

applicable committee under applicable law or listing standards of the NYSE, including any applicable independence requirements (subject in each case to any applicable exceptions, including those for newly public companies and for “controlled companies,” and any applicable phase-in periods). Until the Horizon Sunset Date, Horizon shall have the right to appoint one (1) member of each committee of the Board, provided that any such designee shall be eligible to serve on the applicable committee under applicable law or listing standards of the NYSE, including any applicable independence requirements (subject in each case to any applicable exceptions, including those for newly public companies and for “controlled companies,” and any applicable phase-in periods). Any additional members shall be determined by the Board. Nominees designated to serve on a Board committee shall have the right to remain on such committee until the next election of directors, regardless of any decrease in the percentage of the total voting power of the then outstanding Common Stock then Beneficially Owned by the Topco Equityholders following such designation. Unless the Topco Equityholders notify the Company prior to the time the Board takes action to change the composition of a Board committee, and to the extent the Topco Equityholders have the right to nominate a Board committee member in accordance with this [Section 3\(d\)](#) at the time the Board takes action to change the composition of any such Board committee, any director currently designated by the Topco Equityholders to serve on a committee shall be presumed to be re-designated for such committee.

(e) [Board Observer](#). In addition to the nomination rights set forth in [Section 3\(a\)](#) above, (i) until the Topco Sunset Date, Topco Equityholders shall have the right, but not the obligation, to designate a person (a “[Non-Voting Observer](#)”), and (ii) until the Horizon Sunset Date, Horizon shall have the right, but not the obligation, to designate a Non-Voting Observer, in each case, to attend meetings of the Board (including any meetings of any committees thereof) or any board of directors or similar governing body of any subsidiary of the Company (a “[Subsidiary Board](#)”) in a non-voting observer capacity. Any such Non-Voting Observer shall be permitted to attend all meetings of the Board or such Subsidiary Board. The Topco Equityholders and Horizon shall each have the right to remove and replace its Non-Voting Observer at any time and from time to time. The Company shall furnish to any Non-Voting Observer (i) notices of Board or Subsidiary Board meetings no later than, and using the same form of communication as, notice of Board or Subsidiary Board meetings are furnished to directors and (ii) copies of any materials prepared for meetings of the Board or Subsidiary Board that are furnished to the directors no later than the time such materials are furnished to the directors. Any such Non-Voting Observers shall be required to execute or otherwise become subject to any codes of conduct or confidentiality agreements of the Company or such subsidiary generally applicable to directors of the Company or such subsidiary. Notwithstanding the foregoing, the Company (or such subsidiary) reserves the right to withhold any information and to exclude the Non-Voting Observers from receiving any materials and/or attending any meeting or portion thereof if access to such information or attendance at such meeting would reasonably be expected to adversely affect the attorney-client privilege between the Company (or such subsidiary) and its counsel.

(f) [Voting](#). Each of the Company and the Voting Parties agree not to take, directly or indirectly, any actions (including removing directors in a manner inconsistent with this Agreement) that would knowingly frustrate, obstruct or otherwise affect the provisions of this Agreement and the intention of the parties hereto with respect to the composition of the Board as herein stated. Each Voting Party, to the extent not prohibited by the Charter, shall vote all Voting Shares held by such Voting Party in such manner as may be necessary to elect and/or maintain in office as members of the Board those individuals designated in accordance with this [Section 3](#) and to otherwise effect the intent of the provisions of this Agreement. Each Voting Party further agrees until the Topco Sunset Date and Horizon Sunset Date, as applicable, (i) to take all Necessary Action reasonably available within their power, including casting all votes to which such Voting Party is entitled in respect of its Voting Shares, whether at any annual or special meeting, by written consent or otherwise, so as to vote its Voting Shares on all matters submitted to the stockholders of the Company in accordance with the recommendation of the Board and (ii) not to grant, or enter into a binding agreement with respect to, any proxy to any Person in respect of such party’s Common Stock that would prohibit such party from casting such votes in accordance with clause (i).

4. Controlled Company.

(a) The Voting Parties agree and acknowledge that by virtue of the Topco Equityholders' voting power of more than fifty percent (50%) of the total voting power of the shares of capital stock of the Company outstanding as of the date hereof, the Company will, as of the date hereof, qualify as a "controlled company" within the meaning of Section 303A of the NYSE Listed Company Manual.

(b) From and after the date hereof, the Company agrees and acknowledges that, unless otherwise agreed by the Topco Equityholders, it shall elect, to the extent permitted under the NYSE Listed Company Manual, to be treated as a "controlled company" within the meaning of Section 303A of the NYSE Listed Company Manual.

5. Representations and Warranties of each Voting Party. Each Voting Party on its own behalf hereby represents and warrants to the Company and the other Voting Party, severally and not jointly, with respect to such Voting Party and such Voting Party's ownership of his, her or its Voting Shares set forth on Annex A, as of the date of this Agreement, as follows:

(a) Organization; Authority. Such Voting Party (i) is duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and (ii) has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized, executed and delivered by Voting Party. This Agreement constitutes a valid and binding obligation of Voting Party enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(b) No Consent. Except as provided in this Agreement and for filing requirements under applicable securities laws, no consent, approval or authorization of, or designation, declaration or filing with, any Governmental Authority or other Person on the part of Voting Party is required in connection with the execution, delivery and performance of this Agreement, except where the failure to obtain such consents, approvals, authorizations or to make such designations, declarations or filings would not materially interfere with a Voting Party's ability to perform its obligations pursuant to this Agreement.

(c) No Conflicts; Litigation. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor compliance with the terms hereof, will (A) conflict with or violate any provision of the organizational documents of Voting Party or (B) violate, conflict with or result in a breach of, or constitute a default (with or without notice or lapse of time or both) under any provision of, any trust agreement, loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise, license, judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to Voting Party or to Voting Party's property or assets, except, in the case of clause (B), that would not reasonably be expected to impair, individually or in the aggregate, Voting Party's ability to fulfill its obligations under this Agreement. As of the date of this Agreement, there is no Action pending or, to the knowledge of such Voting Party, threatened, against such Voting Party or any of Voting Party's Affiliates or any of their respective assets or properties that would materially interfere with such Voting Party's ability to perform its obligations pursuant to this Agreement or that would reasonably be expected to prevent, enjoin, alter or delay any of the transactions contemplated by this Agreement.

(d) Ownership of Shares. Voting Party Beneficially Owns its Voting Shares free and clear of all Liens, other than restrictions under applicable securities laws or this Agreement. Except pursuant to this Agreement, the Transaction Agreement, the A&R LLCA and the Registration Rights Agreement, there are no options, warrants or other rights, agreements, arrangements or commitments of any character to which Voting Party is a party relating to the pledge, acquisition, disposition, Transfer or voting of Voting Shares and there are

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no voting trusts or voting agreements with respect to the Voting Shares. Voting Party does not Beneficially Own (i) any shares of capital stock of the Company other than the Voting Shares set forth on Annex A and (ii) any options, warrants or other rights to acquire any additional shares of capital stock of the Company or any security exercisable for or convertible into shares of capital stock of the Company, other than as set forth on Annex A.

### 6. Covenants of the Company.

(a) The Company shall: (i) take any and all action reasonably necessary to effect the provisions of this Agreement and the intention of the parties with respect to the terms of this Agreement and (ii) not take any action that would reasonably be expected to adversely frustrate, obstruct or otherwise affect the rights of the Voting Parties under this Agreement without the prior written consent of the Voting Parties.

(b) The Company shall (i) purchase and maintain in effect at all times directors' and officers' liability insurance in an amount and pursuant to terms determined by the Board to be reasonable and customary, (ii) for so long as any Topco Designee or Horizon Designee nominated pursuant to this Agreement serves as a director on the Board, maintain such coverage with respect to such Topco Designee and Horizon Designee, and (iii) cause the Charter and Bylaws to at all times provide for the indemnification, exculpation and advancement of expenses of all directors of the Company to the fullest extent permitted under applicable law; provided, that upon removal or resignation of any Topco Designee or Horizon Designee for any reason, the Company shall take all actions reasonably necessary to extend such directors' and officers' liability insurance coverage for a period of not less than six (6) years from any such event in respect of any act or omission occurring at or prior to such event.

(c) The Company shall pay all reasonable out-of-pocket expenses incurred by the Topco Designees and Horizon Designee in connection with the performance of his or her duties as a director and in connection with his or her attendance at any meeting of the Board. The Company shall enter into customary indemnification agreements with each Topco Designee, Horizon Designee and officer of the Company from time to time. The Company shall pay all reasonable out-of-pocket expenses incurred by the Non-Voting Observers in connection with the performance of his or her duties in connection with his or her attendance at any meeting of the Board.

### 7. Lock-up.

(a) Subject to Sections 7(b) and except as otherwise determined by the Board, each of the Topco Equityholders and the Horizon Equityholders agree that they shall not Transfer any of their Lock-Up Shares during the Lock-up Period (the "Lock-up"); provided that, (i) 50% of their respective Lock-up Shares shall be released on the date that is six (6) months following the Closing and (ii) the remaining Lock-up Shares shall be released on any date, at least six (6) months following the Closing, on which (A) the price per Lock-up Share exceeds \$15.00 per share for twenty (20) trading days within a consecutive thirty (30) day trading period and (B) the average daily trading volume exceeds one (1) million shares of Common Stock during such consecutive thirty (30) trading day period. Any waiver of the restrictions set forth in this Section 7(a) shall require the approval of a majority of the directors of the Board; provided, however, (i) any waiver of the restrictions in this Section 7(a) in respect of Lock-up Shares held by any of the Topco Equityholders shall require the approval of a majority of the members of the Board who are not Topco Designees and (ii) any waiver of the restrictions in this Section 7(a) in respect of Lock-up Shares held by any of the Horizon Equityholders shall require the approval of a majority of the members of the Board excluding the Horizon Designee.

(b) Notwithstanding the provisions set forth in Section 7(a), each of the Topco Equityholders, the Horizon Equityholders and any of their respective Permitted Transferees shall be permitted to Transfer their Lock-up Shares during the Lock-up Period (i) to (A) the Company's officers or directors, (B) any affiliates or family members of the Company's officers or directors or (C) with respect to any Topco Equityholder and its Permitted Transferees, any direct or indirect partners, members or equity holders of the Topco Equityholders, any Affiliates of the Topco Equityholders or any related investment funds or vehicles controlled or managed by such persons or their respective Affiliates or, with respect to any Horizon Equityholder and its Permitted Transferees,



any direct or indirect partners, members or equity holders of the Horizon Equityholders, any Affiliates of the Horizon Equityholders or any related investment funds or vehicles controlled or managed by such persons or their respective Affiliates; (ii) in the case of an individual, by gift to a member of the individual's immediate family or to a trust, the beneficiary of which is a member of the individual's immediate family or an affiliate of such person; (iii) by gift to a charitable organization; (iv) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (v) in the case of an individual, pursuant to a qualified domestic relations order, (vi) in connection with any *bona fide* mortgage, encumbrance or pledge to a financial institution in connection with any *bona fide* loan or debt transaction or enforcement thereunder; (vii) to the Company (provided that any Transfers to the Company are *pro rata* as between the Topco Equityholders and the Horizon Equityholders, except as otherwise approved by the Board (including at least one Topco Designee and one Horizon Designee)); or (viii) in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Board or a duly authorized committee thereof or other similar transaction which results in all of the Company's stockholders having the right to exchange their shares of Common Stock for cash, securities or other property subsequent to the Closing Date (each such transferee in clauses (i) – (vii) collectively, a "Permitted Transferee"); provided, however, that in the case of clauses (i) through (v) these Permitted Transferees must enter into a written agreement with the Company agreeing to be bound by the transfer restrictions in this Section 7.

(c) Notwithstanding anything contained herein to the contrary, the Lock-up Period shall expire, and each Topco Equityholder, Horizon Equityholder and its respective Permitted Transferees, shall be entitled to Transfer all of its Lock-up Shares, immediately upon the date on which the Company completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of the Company's stockholders having the right to exchange their shares of Common Stock of the Company for cash, securities or other property.

8. Confidentiality. The Company acknowledges that the Topco Designees and Horizon Designees may, including through one-on-one conversations, communicate confidential information obtained in each of their respective capacities as a director of the Company (other than information whose provision would reasonably be expected to pose a conflict of interest) to the officers, employees, external counsel or other third-party advisors (collectively, "Representatives") of the Topco Equityholders and the Horizon Equityholders with a duty to keep such information confidential, in each case, in accordance with and subject to this Section 8. The Topco Equityholders and the Horizon Equityholders will, and will cause their respective Affiliates and direct their respective Representatives who actually receive Confidential Information to, except as otherwise required by applicable law, keep confidential any information (including oral, written and electronic information) concerning the Company, its subsidiaries or its Affiliates that may be furnished to any Topco Equityholder, Horizon Equityholder or their respective Representatives by or on behalf of the Company or any of its Representatives pursuant to this Section 8 ("Confidential Information"); provided, that Confidential Information will not include information that (a) was or becomes available to the public other than as a result of a breach of any confidentiality obligation in this Agreement, (b) was or becomes available to the Topco Equityholders, the Horizon Equityholders or their respective Representatives from a source other than the Company or its Representatives or (c) was independently developed by the Topco Equityholders, the Horizon Equityholders or their respective representatives without reference to, incorporation of, or other use of any Confidential Information.

9. No Other Voting Trusts or Other Arrangement. Each Voting Party shall not, and shall not permit any entity under such Voting Party's control to (i) deposit any Voting Shares or any interest in any Voting Shares in a voting trust, voting agreement or similar agreement, (ii) grant any proxies, consent or power of attorney or other authorization or consent with respect to any of the Voting Shares or (iii) subject any of the Voting Shares to any arrangement with respect to the voting of the Voting Shares, in each case, that conflicts with or prevents the implementation of this Agreement.

10. Additional Shares. Each Voting Party agrees that all securities of the Company that may vote in the election of the Company's directors that such Voting Party purchases, acquires the right to vote or otherwise

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acquires Beneficial Ownership of (including by the exercise or conversion of any security exercisable or convertible for shares of Common Stock) after the execution of this Agreement shall be subject to the terms of this Agreement and shall constitute Voting Shares for all purposes of this Agreement.

11. Specific Enforcement. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party hereto and, accordingly, that this Agreement shall be specifically enforceable, in addition to any other remedy to which such injured party is entitled at law or in equity, and that any breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach or an award of specific performance is not an appropriate remedy for any reason at law or equity and agrees that a party's rights would be materially and adversely affected if the obligations of the other parties under this Agreement were not carried out in accordance with the terms and conditions hereof. Each party further agrees that no party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtain any remedy referred to in this Section 11, and each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

12. Termination. Following the Closing, (a) Sections 2, 3, and 6 of this Agreement shall terminate automatically (without any action by any party hereto) on the first date on which no Voting Party has the right to designate a director to the Board under this Agreement; provided, that the provisions in Section 6(b) shall survive such termination; (b) Section 4 of this Agreement shall terminate automatically (without any action by any party hereto) on the first date on which the combined voting power of the Topco Equityholders no longer exceeds fifty percent (50%) of the total voting power of the Company then outstanding; (c) Section 8 of this Agreement shall terminate (i) as to Topco one (1) year after the last Topco Designee no longer serves on the Board and (ii) as to Horizon one (1) year after the Horizon Designee no longer serves on the Board; and (d) the remainder of this Agreement shall terminate automatically (without any action by any party hereto) (i) as to Topco when the Topco Equityholders cease to Beneficially Own any Voting Shares and (ii) as to Horizon when the Horizon Equityholders cease to Beneficially Own any Voting Shares.

13. Amendments and Waivers. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Company and the Voting Parties. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

14. Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, recapitalization, reorganization or the like, any securities issued with respect to Voting Shares held by Voting Parties shall become Voting Shares for purposes of this Agreement. During the term of this Agreement, all dividends and distributions payable in cash with respect to the Voting Shares shall be paid, as applicable, to each of the undersigned Voting Parties and all dividends and distributions payable in Common Stock or other equity or securities convertible into equity with respect to the Voting Shares shall be paid, as applicable, to each of the undersigned Voting Parties, but all dividends and distributions payable in Common Stock or other equity or securities convertible into equity shall become Voting Shares for purposes of this Agreement.

15. Assignment.

(a) Neither this Agreement nor any of the rights, duties, interests or obligations of the Company hereunder shall be assigned or delegated by the Company in whole or in part.

(b) Prior to the expiration of the Lock-up Period, no Voting Party may assign or delegate such Voting Party's rights, duties or obligations under this Agreement, in whole or in part, except in connection with a

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transfer of Voting Shares by such Voting Party to a Permitted Transferee in accordance with the terms of the Registration Rights Agreement and this Section 15; provided, that the rights hereunder that are personal to the Voting Parties may not be assigned or delegated in whole or in part, except that (i) the Topco Equityholders shall be permitted to transfer rights hereunder as the Topco Equityholders to one or more other Topco Equityholders or any of their respective Affiliates or direct or indirect partners, members or equity holders (each, a “Topco Transferee”), (ii) the Horizon Equityholders shall be permitted to transfer rights hereunder as the Horizon Equityholders to one or more other Horizon Equityholders or any of their respective Affiliates or direct or indirect partners, members or equity holders (each, a “Horizon Transferee”) and (iii) the Topco Equityholders shall be permitted to designate any Topco Transferee as a “Topco Equityholder” and the Horizon Equityholders shall be permitted to designate any Horizon Transferee as a “Horizon Equityholder”, in each case, for purposes of this Agreement as if such Permitted Transferee were an initial signatory hereto.

(c) This Agreement and the provisions hereof shall, subject to Section 15(c), inure to the benefit of, shall be enforceable by and shall be binding upon the respective assigns and successors in interest of the Voting Parties, including with respect to any of such Voting Party’s Voting Shares that are transferred to a Permitted Transferee in accordance with the terms of this Agreement and the Registration Rights Agreement.

(d) No assignment in accordance with this Section 15 by any party hereto (including pursuant to a transfer of any Voting Party’s Voting Shares) of such party’s rights, duties and obligations hereunder shall be binding upon or obligate the Company or any other party hereto unless and until each of the other parties hereto shall have received (i) written notice of such assignment as provided in Section 23 and (ii) the executed written agreement of the assignee, in a form reasonably satisfactory to each of the other parties hereto, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement) as fully as if it were an initial signatory hereto. Each Voting Party shall not permit the transfer of any such Voting Party’s Voting Shares to a Permitted Transferee unless and until the person to whom such securities are to be transferred has executed a written agreement as provided in clause (ii) of the preceding sentence.

(e) Any transfer or assignment made other than as provided in this Section 15 shall be null and void.

(f) Notwithstanding anything herein to the contrary, for purposes of determining the number of shares of capital stock of the Company held by the Voting Parties, the aggregate number of shares so held by the Voting Parties shall include any shares of capital stock of the Company transferred or assigned to a Permitted Transferee in accordance with the provisions of this Section 15; provided, that any such Permitted Transferee has executed a written agreement agreeing to be bound by the terms and provisions of this Agreement as contemplated by Section 15(d) above, including agreeing to vote or cause to be voted the Voting Shares Beneficially Owned by such Permitted Transferee as required of a Voting Party hereunder.

16. Treatment of Warrants. In the event the terms of the Horizon Warrants (as defined in the Transaction Agreement) are not modified prior to the Closing in a manner resulting in the treatment of such Horizon Warrants as equity under the rules and guidelines of the SEC at and after the Closing, the Horizon Equityholders and the Topco Equityholders shall support any action taken by the Board to cause the outstanding warrants of the Company immediately following the closing to be treated as equity under the rules and guidelines of the SEC, including by voting (in person or by proxy at a meeting of stockholders or warrant holders of the Company, or by written consent) its Common Stock and warrants to purchase shares of Common Stock in favor of any such changes to the extent such a vote is required.

17. Actions by the Topco Equityholders and Horizon Equityholders. For the avoidance of doubt, (a) any action to be taken hereunder by the Topco Equityholders shall be taken by the action of the Topco Equityholders holding a majority of the Common Stock then-owned by such Topco Equityholders and (b) any action to be taken hereunder by the Horizon Equityholders shall be taken by the action of the Horizon Equityholders holding a majority of the Common Stock then-owned by such Horizon Equityholders.

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18. Other Rights. Except as provided by this Agreement, each Voting Party shall retain the full rights of a holder of shares of capital stock of the Company with respect to the Voting Shares, including the right to vote the Voting Shares subject to this Agreement.

19. Severability. In the event that any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Governing Law. This Agreement, the rights and duties of the parties hereto, any disputes (whether in contract, tort or statute), and the legal relations between the parties arising hereunder shall be governed by and interpreted and enforced in accordance with the laws of the State of Delaware without reference to its conflicts of laws provisions.

21. Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought against any of the parties in the United States District Court for the District of Delaware or any Delaware state court located in Wilmington, Delaware, and each of the parties hereby consents to the exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such suit, action or proceeding and waives any objection to venue laid therein. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court.

22. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

24. Notices. Any notices provided pursuant to this Agreement shall be in writing and given by (i) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (ii) delivery in person or by courier service providing evidence of delivery or (iii) transmission by electronic mail. Notices provided pursuant to this Agreement shall be provided, (x) if to the Company, Hoya Topco or Horizon, in accordance with the terms of the Transaction Agreement or (y) to any other address or email address, as a party designates in writing to the other parties in accordance with this Section 24.

25. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement among the parties, and supersedes any prior agreement or understanding among the parties, with regard to the subject matter hereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein.

*[Remainder of page intentionally left blank; signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**COMPANY:**

**Vivid Seats Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**VOTING PARTIES:**

**Hoya Topco, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**Horizon Sponsor, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

Annex A

Voting Shares

<u>Holder</u>	<u>Address</u>	<u>Shares of Class A Common Stock</u>	<u>Shares of Class B Common Stock</u>	<u>Warrants</u>	<u>Other Equity Securities / Rights to Acquire Equity Securities</u>
Hoya Topco, LLC					
Horizon Sponsor, LLC					

TAX RECEIVABLE AGREEMENT

by and among

VIVID SEATS INC.

HOYA INTERMEDIATE, LLC

GTCR MANAGEMENT XI, LLC, as TRA HOLDER REPRESENTATIVE,

HOYA TOPCO, LLC,

the several BLOCKER TRA HOLDERS (as defined herein)

and

OTHER TRA HOLDERS (as defined herein)  
FROM TIME TO TIME PARTY HERETO

Dated as of [●]

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**Exhibits**

Exhibit A	-	Form of Joinder Agreement
Exhibit B	-	Agreement and Plan of Reorganization

## TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of [·], is hereby entered into by and among Vivid Seats Inc., a Delaware corporation (the “Corporation”), Hoya Intermediate, LLC, a Delaware limited liability company (the “LLC”), the TRA Holder Representative (as defined below), Hoya TopCo, LLC, a Delaware limited liability company (the “Initial TRA Holder”), the Blocker TRA Holders (as defined below), and each of the other Exchange TRA Holders (as defined below) from time to time party hereto (collectively, and together with the Initial TRA Holder, the Blocker TRA Holders and their respective transferees, the “TRA Holders”).

### RECITALS

WHEREAS, the LLC is treated as a partnership for U.S. federal income tax purposes;

WHEREAS, each of the members of the LLC who are parties hereto, and their respective assignees who become parties hereto by satisfying the Joinder Requirement, directly or indirectly owns limited liability company interests in the LLC (the “Units”);

WHEREAS, pursuant to that certain Transaction Agreement by and among (i) the LLC, (ii) the Initial TRA Holder, (iii) Horizon Acquisition Corporation, a Delaware corporation and predecessor to the Corporation (“Horizon”), and (iv) Horizon Sponsor, LLC, a Delaware limited liability company (“Horizon Sponsor”), the Corporation will acquire newly-issued Units in exchange for [·] (such Transaction Agreement, the “Transaction Agreement,” and the foregoing transactions, the “Business Combination”);

WHEREAS, in connection with the Business Combination, the LLC will revalue its property for U.S. federal income tax purposes (and any corresponding U.S. state or local tax purposes) pursuant to Section 1.704-1 of the Treasury Regulations;

WHEREAS, the Corporation, each Blocker Corporation (as defined in the LLC Agreement) and such Blocker Corporation’s shareholders (the “Blocker TRA Holders”) have entered into a Plan of Reorganization in the form attached as Exhibit B to this Agreement, pursuant to which, and subject to the terms of the LLC Agreement, no later than three (3) years after the later of (i) the date of the Business Combination and (ii) the date of the first Secondary Sale (as defined below), each Blocker Corporation shall merge with and into the Corporation in a Blocker Merger Transaction (as defined by the LLC Agreement, and the transactions contemplated by such Plan of Reorganization, the “Reorganization Transactions”);

WHEREAS, as a result of each Reorganization Transaction, the Corporation will acquire the Units and interests in this Agreement then held by the applicable Blocker Corporation, and the Corporation may obtain or be entitled to certain tax attributes as further described herein, and in partial consideration of acquiring the Blocker Corporation pursuant to such Reorganization Transaction, subject to the terms of this Agreement, the Corporation agrees to make certain payments to the Blocker TRA Holders party thereto;

WHEREAS, pursuant to and subject to the terms of the LLC Agreement, from time to time, each holder of Units (other than the Corporation or its direct or indirect Subsidiaries) has the right to require the LLC to redeem (a “Redemption”) all or a portion of such holder’s Units for cash or, at the Corporation’s election, Class A Common Stock, in either case contributed to the LLC by the Corporation; *provided* that, at the election of the Corporation in its sole discretion, the Corporation may effect a direct exchange (a “Direct Exchange”) of such cash or shares of Class A Common Stock for such Units (holders described in this clause, the “Exchange TRA Holders”);

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WHEREAS, the LLC and any direct or indirect Subsidiary (owned through a chain of entities each of which is treated as a partnership or a disregarded entity for U.S. federal income tax purposes) of the LLC that is treated as a partnership for U.S. federal income tax purposes (together with the LLC and any direct or indirect Subsidiary (owned through a chain of entities each of which is treated as a partnership or a disregarded entity for U.S. federal income tax purposes) of the LLC that is treated as a disregarded entity for U.S. federal income tax purposes, the “LLC Group”) will, to the extent such direct or indirect Subsidiary is treated as a partnership for U.S. federal income tax purposes and the Corporation controls the preparation of the relevant Tax Return and elections made on such Tax Return, have in effect an election under Section 754 of the Code (as defined below) for the Taxable Year (as defined below) in which any Exchange (as defined below) occurs, in each case, to the extent that such election would result in an adjustment to the Corporation’s share of the tax basis of the assets owned by the LLC Group as of the date of the Exchange; and

WHEREAS, the parties to this Agreement desire to provide for certain payments and make certain arrangements with respect to certain tax benefits derived by the Corporation as a result of the Business Combination, any Exchanges or any Reorganization Transactions and the receipt of payments under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### **ARTICLE I. DEFINITIONS**

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both (i) the singular and plural and (ii) the active and passive forms of the terms defined).

“Advisory Firm” means any accounting firm that is nationally recognized as being an expert in Covered Tax matters and is not an Affiliate of the Corporation, provided that such Advisory Firm that is used by the Corporation shall be selected by the Corporation and shall be reasonably acceptable to the TRA Holder Representative.

“Actual Interest Amount” is defined in Section 3.1(b)(vi) of this Agreement.

“Actual Tax Liability” means, with respect to any Taxable Year, the sum of (i) the sum of (A) the actual liability for U.S. federal income taxes of the Corporation and (B) without duplication, the portion of any actual liability for U.S. federal income taxes imposed directly on the LLC (and any of the LLC’s Subsidiaries treated as a partnership for U.S. federal income tax purposes) under Section 6225 of the Code that is allocable to the Corporation in accordance with the LLC Agreement and the Code, (ii) the product of (A) the net positive amount of the U.S. federal taxable income (for the avoidance of doubt, determined without taking into account any U.S. federal benefit of any applicable state or local tax deduction and taking into account any net operating losses) for such Taxable Year reported on the Corporation’s IRS Form 1120 (or any successor form) and (B) the Assumed State and Local Tax Rate, and (iii) the actual liability of the Corporation for any Covered Taxes other than U.S. federal, state and local income taxes. For the avoidance of doubt, the calculation of the amount described in clause (i) shall take into account any U.S. federal income tax benefit realized by the Corporation with respect to state and local jurisdiction income taxes (with such benefit determined by taking into account an assumed deduction based on the amount computed under clause (ii), and disregarding the actual deduction for state and local jurisdiction income taxes reflected on the Corporation’s income tax return).

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

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“Aggregate TRA Rights” means [●].<sup>1</sup>

“Agreed Rate” means LIBOR plus 100 basis points.

“Agreement” is defined in the preamble to this Agreement.

“Amended Schedule” is defined in Section 2.5(b) of this Agreement.

“Assumed State and Local Tax Rate” means the tax rate equal to the sum of (i) for each state that imposes income or franchise taxes on the Corporation on its allocable share of income with respect to its interest in the LLC, the product of (x) the Corporation’s income tax apportionment factor for each such state and local jurisdiction in which the Corporation files income or franchise tax returns for the relevant Taxable Year and (y) the highest corporate income and franchise tax rate in effect for such Taxable Year for each such state and local jurisdiction in which the Corporation files income tax returns for each relevant Taxable Year, and (ii) for each state that imposes income or franchise taxes directly on the LLC (and any of the LLC’s Subsidiaries treated as a partnership for state income tax purposes), the product of (x) the income tax apportionment factor for such LLC or Subsidiary, as applicable, for each such state in which the LLC or such Subsidiary files income or franchise tax returns for the relevant taxable year of such LLC or Subsidiary ending on or after the Business Combination Date and (y) the highest income tax rate in effect applicable to the LLC or such Subsidiary, as applicable, for such taxable year for each such state in which the LLC or such Subsidiary files income or franchise tax returns.

“Bankruptcy Code” is defined in Section 4.1(c) of this Agreement.

“Basis Adjustment” means the increase or decrease to the Corporation’s share of the tax basis of the Reference Assets (i) under Section 734(b), 743(b) and 754 of the Code (in situations where, following an Exchange, the LLC remains in existence as an entity for tax purposes) and (ii) under Sections 732 and 1012 of the Code (in situations where, as a result of one or more Exchanges, the LLC becomes an entity that is disregarded as separate from its owner for tax purposes), in each case, as a result of any Exchange and any payments made under this Agreement. As relevant, Basis Adjustments are to be calculated pursuant to Treasury Regulations Section 1.743-1. Notwithstanding any other provision of this Agreement, the amount of any Basis Adjustment resulting from an Exchange of one or more Units shall be determined without regard to any Pre-Exchange Transfer of such Units and as if any such Pre-Exchange Transfer had not occurred.

“Basis Schedule” is defined in Section 2.3 of this Agreement.

“Blocker Attributes” means any U.S. federal, state, or local net operating losses, capital losses, disallowed interest expense carryforwards under Section 163(j) of the Code (and any comparable provision of U.S. federal, state, or local tax law), credit carryforwards, and foreign tax credits of a Blocker Corporation, in each case, relating to taxable periods (or portions thereof) ending at the close of business on the closing date of the Business Combination and the availability of which are determined as of the applicable Reorganization Transaction.

“Blocker Corporation” is defined in the LLC Agreement.

“Blocker Corporation Attribute Schedule” is defined in Section 2.2.

“Blocker Merger Transactions” is defined in the LLC Agreement.

“Blocker TRA Holder Sharing Percentages” means, for each Blocker TRA Holder with respect to a given Blocker Corporation, (i) at the time of a Reorganization Transaction involving a Blocker Corporation owned by

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<sup>1</sup> Note to Draft: To be equal to the aggregate number of Intermediate Common Units held by Topco as of the date of this Agreement.

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such Blocker TRA Holder, a percentage equal to the TRA Holder Sharing Percentage of such Blocker Corporation immediately prior to such Reorganization Transaction, and (ii) thereafter such percentage as determined by the TRA Holder Representative to reflect any transfers by a Blocker TRA Holder of its TRA Rights. The TRA Holder Representative shall provide a written schedule to the Corporation reflecting any changes to the Blocker TRA Holder Sharing Percentages.

“Blocker TRA Holders” is defined in the recitals to this Agreement.

“Board” means the Board of Directors of the Corporation.

“Business Combination” is defined in the recitals to this Agreement.

“Business Combination Date” means the closing of the Business Combination.

“Business Day” means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in New York are closed.

“Change of Control” shall have the same meaning defined in the LLC Agreement, other than clause (iv) of such definition which shall be disregarded for purposes of this definition.

“Class A Common Stock” means the class A common stock, par value \$0.0001 per share, of the Corporation.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Common Basis” means the existing tax basis of the Reference Assets that are depreciable or amortizable (including assets that will eventually be subject to depreciation or amortization, once placed in service) for U.S. federal income tax purposes. For the avoidance of doubt, Common Basis shall not include any Basis Adjustments.

“Common Basis Addback Amount” means, with respect to a Taxable Year, for each Exchange or Reorganization Transaction occurring in such Taxable Year or that occurred in any of the fourteen (14) Taxable Years preceding the Taxable Year for which Hypothetical Tax Liability is determined, the aggregate of the products of (i) the Common Basis, at the time of such Exchange or Reorganization Transaction, of each Subsequently Acquired Asset as of the time of such Exchange or Reorganization Transaction, (ii) a fraction, the numerator of which is the number of Units transferred in such Exchange or Reorganization Transaction, and the denominator of which is the total number of outstanding Units immediately following such Exchange or Reorganization Transaction, and (iii) a fraction, the numerator of which is one (1) and the denominator of which is fifteen (15).

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or other agreement.

“Corporation” is defined in the preamble to this Agreement.

“Covered Person” is defined in Section 7.16 of this Agreement.

“Covered Taxes” means any and all U.S. federal, state, local, and foreign taxes, assessments or similar charges that are based on or measured with respect to net income or profits and any interest related thereto.

“Cumulative Net Realized Tax Benefit” is defined in Section 3.1(b)(ii) of this Agreement.

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“Default Rate” means LIBOR plus 450 basis points.

“Default Rate Interest” is defined in Section 3.1(b)(vii) of this Agreement.

“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of U.S. state tax law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for tax.

“Direct Exchange” is defined in the recitals to this agreement.

“Dispute” is defined in Section 7.8(a) of this Agreement.

“Early Termination Effective Date” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“Early Termination Notice” is defined in Section 4.2 of this Agreement.

“Early Termination Payment” is defined in Section 4.3(b) of this Agreement.

“Early Termination Rate” means LIBOR plus 100 basis points.

“Early Termination Reference Date” is defined in Section 4.2 of this Agreement.

“Early Termination Schedule” is defined in Section 4.2 of this Agreement.

“Estimated Tax Benefit Payment” is defined in Section 3.4 of this Agreement.

“Exchange” means any Direct Exchange or Redemption.

“Exchange Date” means the date of any Exchange.

“Exchange TRA Holders” is defined in the recitals to this Agreement.

“Expert” is defined in Section 7.9 of this Agreement.

“Final Payment Date” means any date on which a payment is required to be made pursuant to this Agreement. For the avoidance of doubt, the Final Payment Date in respect of a Tax Benefit Payment is determined pursuant to Section 3.1(a) of this Agreement.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the sum of (i) the sum of (A) the hypothetical liability for U.S. federal income taxes of the Corporation and (B) without duplication, the portion of any hypothetical liability for U.S. federal income taxes imposed directly on the LLC (and any of the LLC’s Subsidiaries treated as a partnership for U.S. federal income tax purposes) under Section 6225 of the Code that is allocable to the Corporation in accordance with the LLC Agreement and the Code, (ii) the product of (A) the net positive amount of the U.S. federal taxable income (for the avoidance of doubt, determined without taking into account any U.S. federal benefit of any applicable state or local tax deduction and taking into account any net operating losses) for purposes of determining such hypothetical liability for U.S. federal income taxes, and (B) the Assumed State and Local Tax Rate, and (iii) the hypothetical liability of the Corporation for any Covered Taxes other than U.S. federal, state and local income taxes, but for purposes of determining the liability in clauses (i) through (iii) above, without duplication, (1) with respect to any Originally Held Asset, calculating depreciation, amortization, or other similar deductions, or otherwise calculating any items of income, gain, deduction or loss, by reference to the Non-Adjusted Tax Basis as reflected on the applicable Basis Schedule,

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including amendments thereto, for the Taxable Year, (2) excluding the effect of any and all Basis Adjustments, (3) excluding the effect of any and all Blocker Attributes, (4) including in income of the Corporation the Common Basis Addback Amount for the Taxable Year, (5) excluding the impact of Section 704(c) Items (which, for the avoidance of doubt, shall not duplicate the effects of clause (1)), and (6) excluding any deduction attributable to Imputed Interest for the Taxable Year. For the avoidance of doubt, the Hypothetical Tax Liability shall be determined without taking into account the carryover or carryback of any tax item attributable to any of the items described in clauses (1), (2), (3), (4), (5) or (6) of the previous sentence. For the avoidance of doubt, the calculation of the amount described in clause (i) shall take into account any U.S. federal income tax benefit that would be realized by the Corporation with respect to state and local jurisdiction income taxes (with such benefit determined by taking into account an assumed deduction based on the amount computed under clause (ii), and disregarding the hypothetical deduction for state and local jurisdiction income taxes of the Corporation).

“Imputed Interest” is defined in Section 3.1(b)(v) of this Agreement.

“IRS” means the U.S. Internal Revenue Service.

“Joinder” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“Joinder Requirement” is defined in Section 7.6(a) of this Agreement.

“LIBOR” means for each month (or portion thereof) during any period, an interest rate per annum equal to the rate per annum reported, on the date two Business Days prior to the first Business Day of such month, as published on the applicable Bloomberg screen page (or other commercially available source providing quotations of LIBOR) for one-month London interbank offered rates for U.S. dollar deposits for such month (or portion thereof). If LIBOR ceases to be published in accordance with the definition thereof, SOFR shall be used in lieu of LIBOR for so long as LIBOR is not so published.

“LLC” is defined in the preamble to this Agreement.

“LLC Agreement” means that certain Second Amended and Restated Limited Liability Company Agreement of the LLC, dated as of the date hereof, as such agreement may be further amended, restated, supplemented and/or otherwise modified from time to time.

“LLC Group” is defined in the recitals to this Agreement.

“Maximum Rate” is defined in Section 7.13 of this Agreement.

“Net Tax Benefit” is defined in Section 3.1(b)(i) of this Agreement.

“Non-Adjusted Tax Basis” means, in the case of any Originally Held Asset that is depreciable or amortizable (including, for the avoidance of doubt, any amortizable Section 197 intangible (as such term is used in the Code)), for purposes of U.S. federal income tax law, treating such Originally Held Asset as having a Common Basis of zero at all times.

“Non-TRA Portion” is defined in Section 2.4(b) of this Agreement.

“Objection Notice” is defined in Section 2.5(a)(i) of this Agreement.

“Original Liability” means any liability described in Treasury Regulations Section 1.752-7(b)(3) of any member of the LLC Group as of the Business Combination.

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“Originally Held Asset” means any Reference Asset that was a Reference Asset at the time of the Business Combination.

“Parties” means the parties named on the signature pages to this agreement and each additional party that satisfies the Joinder Requirement, in each case with their respective successors and assigns.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Pre-Exchange Transfer” means any transfer of one or more Units (including upon the death of a TRA Holder) (i) that occurs after the Business Combination but prior to an Exchange of such Units and (ii) to which Section 743(b) of the Code applies.

“Realized Tax Benefit” is defined in Section 3.1(b)(iii) of this Agreement.

“Realized Tax Detriment” is defined in Section 3.1(b)(iv) of this Agreement.

“Reconciliation Dispute” is defined in Section 7.9 of this Agreement.

“Reconciliation Procedures” is defined in Section 2.5(a) of this Agreement.

“Redemption” has the meaning in the recitals to this Agreement.

“Reference Asset” means any tangible or intangible asset of any member of the LLC Group or any of their respective successors or assigns, whether held directly by the LLC or indirectly by the LLC through any entity in which the LLC now holds or may subsequently hold an ownership interest (but only if such entity is treated as a partnership or disregarded entity for U.S. federal income tax purposes and for purposes of state or local income tax law). A Reference Asset also includes any asset the tax basis of which is determined, in whole or in part, by reference to the tax basis of an asset that is described in the preceding sentence, including “substituted basis property” within the meaning of Section 7701(a)(42) of the Code.

“Reorganization Transactions” is defined in the recitals to this Agreement.

“Reorganization Transaction Date” means the date of any applicable Reorganization Transaction.

“Rules” is defined in Section 7.8(a) of this Agreement.

“Schedule” means any of the following: (i) a Basis Schedule, (ii) a Blocker Corporation Attribute Schedule, (iii) a Tax Benefit Schedule, or (iv) the Early Termination Schedule, and, in each case, any amendments thereto.

“Secondary Sale” means any exchange of Units by the Initial TRA Holder for Class A Common Stock and subsequent sale of such Class A Common Stock after the date of this Agreement.

“Section 704(c) Items” means the additional allocations of tax items of income, gain, deduction and loss to, or away from, the Corporation pursuant to Section 704(c) of the Code and the Treasury Regulations thereunder (including pursuant to any “reverse Section 704(c)” allocations) in respect of (i) any difference between the fair market value and the tax basis of any Originally Held Asset immediately following the Business Combination and (ii) any Original Liabilities, in each case as compared to the tax items of income, gain, deduction and loss to, or away from, the Corporation that would have been allocated if Section 704(c) of the Code and the Treasury Regulations thereunder were not taken into account. For the avoidance of doubt, the foregoing would include disproportionate allocations (if any) of tax items of income, gain, deduction and loss to a TRA Holder and away from the Corporation.



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“Senior Obligations” is defined in Section 5.1 of this Agreement.

“SOFR” means for each month (or portion thereof) during any period, an interest rate per annum equal to the rate per annum reported, on the date two Business Days prior to the first Business Day of such month, on the applicable Bloomberg screen page (or other commercially available source providing quotations of SOFR) for the Secured Overnight Financing Rate as published by the Federal Reserve Bank of New York for such month (or portion thereof). In no event will SOFR be less than 0%.

“Subsequently Acquired Asset” means any Reference Asset that became a Reference Asset after the Business Combination.

“Subsidiary” means, with respect to any Person and as of the date of any determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls, more than 50% of the voting power or other similar interests, or the sole general partner interest, or managing member or similar interest, of such Person.

“Subsidiary Stock” means any stock or other equity interest in any Subsidiary of the Corporation that is treated as a corporation for U.S. federal income tax purposes and applicable state and local tax purposes.

“Tax Benefit Payment” is defined in Section 3.1(b) of this Agreement.

“Tax Benefit Schedule” is defined in Section 2.4(a) of this Agreement.

“Tax Return” means any return, declaration, report or similar statement filed or required to be filed with any Taxing Authority in respect to taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated tax.

“Taxable Year” means a taxable year of the Corporation as defined in Section 441(b) of the Code or comparable section of U.S. state or local tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made), ending on or after the Business Combination Date.

“Taxing Authority” means any national, federal, state, county, municipal, or local government, or any subdivision, agency, commission or authority thereof, or any quasi-governmental body, or any other authority of any kind, exercising regulatory or other authority in relation to tax matters.

“Termination Objection Notice” is defined in Section 4.2 of this Agreement.

“Threshold Exchange Units” is defined in Section 3.6 of this Agreement.

“TRA Holders” is defined in the preamble to this Agreement.

“TRA Holder Representative” is defined in Section 7.16 of this Agreement.

“TRA Holder Sharing Percentages” means (i) initially 100% for the Initial TRA Holder, and (ii) thereafter, as of a specific date and with respect to a TRA Holder, a number, represented as a percentage, equal to (A) the number of TRA Rights held by such TRA Holder, *divided by* (B) the Aggregate TRA Rights, *multiplied by* (C) 100. The TRA Holder Representative shall provide a written schedule to the Corporation reflecting any changes to the TRA Holder Sharing Percentages.

“TRA Right” means a right representing an interest in the rights of the TRA Holders under this agreement, including the right to receive a Tax Benefit Payment. The aggregate number of TRA Rights hereunder shall be

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the Aggregate TRA Rights, each of which shall be held as of the date hereof by the Initial TRA Holder. After the date hereof, if the number of outstanding Units shall have been changed into a different number of units or a different class, by reason of any distribution, subdivision, reclassification, recapitalization, split, combination or exchange, or any similar event, then the number of TRA Rights held by each TRA Holder and the Aggregate TRA Rights will each be equitably adjusted to reflect such change.

“Transaction Agreement” is defined in the recitals to this Agreement.

“Treasury Regulations” means the final, temporary, and (to the extent they can be relied upon) proposed regulations under the Code, as promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“True-Up” is defined in Section 3.4 of this Agreement.

“U.S.” means the United States of America.

“Units” is defined in the recitals to this Agreement.

“Valuation Assumptions” means, as of an Early Termination Effective Date, the assumptions that:

(1) in each Taxable Year ending on or after such Early Termination Effective Date, the Corporation will have taxable income sufficient to fully use the deductions arising from the Basis Adjustments, Common Basis (limited, in the case of Subsequently Acquired Assets, to the Common Basis Addback Amount for such Taxable Year), Blocker Attributes, Section 704(c) Items, and the Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available, taking into account clause (4) below;

(2) (i) the U.S. federal income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Effective Date, except to the extent any change to such tax rates for such Taxable Year have already been enacted into law, and (ii) the combined U.S. state and local income tax rates (but not, for the avoidance of doubt, U.S. federal income tax rates) for each such Taxable Year shall be the Assumed State and Local Tax Rate for the Taxable Year that includes the Early Termination Effective Date;

(3) all taxable income of the Corporation will be subject to the maximum applicable tax rates for each Covered Tax throughout the relevant period; *provided*, the combined tax rate for U.S. state and local income taxes (but not, for the avoidance of doubt, federal income taxes) shall be the Assumed State and Local Tax Rate);

(4) any loss or disallowed interest or other loss carryovers or carryforwards generated by any Basis Adjustments, Common Basis, Blocker Attributes, Section 704(c) Items, or Imputed Interest (including any such Basis Adjustments, and Imputed Interest generated as a result of payments under this Agreement) and available as of the Early Termination Effective Date, and any Blocker Attributes that have not been previously utilized in determining a Tax Benefit Payment as of the Early Termination Effective Date, will be used by the Corporation on a pro rata basis over a fifteen-year period beginning on the Early Termination Effective Date, or up through their scheduled expiration under applicable law (if earlier) (provided that, in any year that the Corporation is prevented from fully utilizing net operating losses or other tax attributes attributable to a Blocker Corporation pursuant to Section 382, 383, or 384 of the Code (or any successor provision or similar provision under state or local law), the amount utilized for purposes of this provision shall not exceed the amount that would otherwise be utilizable under Section 382, 383, or 384 of the Code (or any successor provision or similar provision under state or local law));

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(5) any non-amortizable assets (other than Subsidiary Stock) will be disposed of on the earlier of (i) the fifteenth anniversary of the applicable Basis Adjustment (or, if such Basis Adjustment occurred more than fifteen years before the Early Termination Effective Date, the Early Termination Effective Date) and (ii) the fifteenth anniversary of the Early Termination Effective Date;

(6) any Subsidiary Stock will be deemed never to be disposed of except if Subsidiary Stock is directly disposed of in the Change of Control;

(7) if, on the Early Termination Effective Date, any TRA Holder has Units that have not been Exchanged, then such Units shall be deemed to be Exchanged for the fair market value of the cash or Class A Common Stock that would be received by such TRA Holder if such Units had been Exchanged on the Early Termination Effective Date (including Units held by Blocker Corporations that have not consummated a Reorganization Transaction, in which case, the relevant Blocker Corporation would be treated as having Exchanged its Units, in the manner set forth above in this clause, and would be an Exchange TRA Holder (and not a Blocker TRA Holder) with respect to such Units), and such TRA Holder shall be deemed to receive the amount of cash such TRA Holder would have been entitled to pursuant to Section 4.3(a) had such Units actually been Exchanged on the Early Termination Effective Date; and

(8) any payment obligations pursuant to this Agreement will be satisfied on the date that any Tax Return to which such payment obligation relates is required to be filed under applicable law as of the Early Termination Effective Date excluding any extensions.

Section 1.2 Rules of Construction. Unless otherwise specified herein:

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

(b) For purposes of interpretation of this Agreement:

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

(ii) References in this Agreement to a Schedule, Article, Section, clause or sub-clause refer to the appropriate Schedule to, or Article, Section, clause or subclause in, this Agreement.

(iii) References in this Agreement to dollars or “\$” refer to the lawful currency of the United States of America.

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

(v) 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.

(vi) The term “or” shall not be exclusive and shall instead mean “and/or.”

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

(d) Unless otherwise expressly provided herein, (a) references to organization documents (including the LLC Agreement), agreements (including this Agreement) 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 permitted hereby; and (b) references to any law (including the Code and the Treasury Regulations) shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

**ARTICLE II.  
DETERMINATION OF REALIZED TAX BENEFIT**

**Section 2.1 Basis Adjustments; LLC 754 Election; Revaluation.**

(a) Basis Adjustments. The Parties acknowledge and agree to treat (A) to the fullest extent permitted by law each Direct Exchange as giving rise to Basis Adjustments and (B) to the fullest extent permitted by law each Redemption using cash or Class A Common Stock contributed to the LLC by the Corporation as a direct purchase of Units by the Corporation from the applicable Exchange TRA Holder pursuant to Section 707(a)(2)(B) of the Code as giving rise to Basis Adjustments. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest.

(b) Section 754 Election. The Corporation shall ensure that, on and after the date hereof and continuing throughout the term of this Agreement, the LLC and each other member of the LLC Group that is treated as a partnership for U.S. federal income tax purposes (and for which the Corporation controls the preparation of the relevant Tax Return and elections made on such Tax Return) will have in effect an election under Section 754 of the Code (and under any similar provisions of applicable U.S. state or local law) for each Taxable Year, in each case, to the extent that such election would result in an adjustment to the Corporation's share of the tax basis of the assets owned by the LLC Group as of the date of the relevant Exchange.

(c) Revaluation. Pursuant to, and in accordance with, Section 1.704-1 of the Treasury Regulations, for U.S. federal income tax purposes (and any corresponding U.S. state or local tax purposes), the LLC shall revalue its property to fair market value as of the time of the Business Combination. The Parties hereto acknowledge and agree that such revaluation may result in subsequent Section 704(c) Items.

**Section 2.2 Blocker Corporation Attribute Schedule**. At least thirty (30) days prior to any Reorganization Transaction, the relevant Blocker Corporation shall deliver to the Corporation and the TRA Holder Representative a schedule (a "Blocker Corporation Attribute Schedule") of (a) the Blocker Attributes of the Blocker Corporation as of the closing date of the Business Combination and (b) any current or anticipated applicable limitations on the use of the Blocker Attributes for tax purposes (including under Section 382 of the Code). Any Blocker Corporation Attribute Schedule so delivered will become final and binding on the Parties pursuant to the procedures set forth in Section 2.5(a) and may be amended by the Parties pursuant to the procedures set forth in Section 2.5(b).

**Section 2.3 Basis Schedules**. Within ninety (90) days after the filing of the U.S. federal income Tax Return of the Corporation for each relevant Taxable Year, the Corporation shall deliver to the TRA Holder Representative a schedule developed in consultation with the Advisory Firm (the "Basis Schedule") that shows, in reasonable detail as necessary in order to understand the calculations performed under this Agreement: (a) the Basis Adjustments with respect to the Reference Assets as a result of the relevant Exchanges effected in such Taxable Year, (b) the period (or periods) over which each Basis Adjustment is amortizable and/or depreciable, (c) the Non-Adjusted Tax Basis with respect to the Reference Assets described in clause (a) as of each relevant Exchange, (d) the Common Basis that remains (if any) and may give rise to payments pursuant to the terms of this Agreement, and (e) the period (or periods) over which the Common Basis is amortizable and/or depreciable. The Basis Schedule will become final and binding on the Parties pursuant to the procedures set forth in Section 2.5(a) and may be amended by the Parties pursuant to the procedures set forth in Section 2.5(b).

**Section 2.4 Tax Benefit Schedules**.

(a) Tax Benefit Schedule. Within ninety (90) days after the filing of the U.S. federal income Tax Return of the Corporation for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporation shall provide to the TRA Holder Representative a schedule developed in consultation with the

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Advisory Firm showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year (a “Tax Benefit Schedule”). The Tax Benefit Schedule will become final and binding on the Parties pursuant to the procedures set forth in Section 2.5(a), and may be amended by the Parties pursuant to the procedures set forth in Section 2.5(b).

(b) Applicable Principles. Subject to the provisions of this Agreement, the Realized Tax Benefit or Realized Tax Detriment for each Taxable Year is intended to measure the decrease or increase in the Actual Tax Liability for such Taxable Year attributable to the Basis Adjustments, Common Basis (limited, in the case of Subsequently Acquired Assets, to the Common Basis Addback Amount for such Taxable Year), Blocker Attributes, Section 704(c) Items, and Imputed Interest, as determined using a “with and without” methodology described in Section 2.5(a). To the extent any portion of a Realized Tax Benefit could be attributed to both Common Basis and a Section 704(c) Item, the Realized Tax Benefit shall be attributed to Common Basis. Carryovers, carryforwards, or carrybacks, of any tax item attributable to any Basis Adjustment, Common Basis, Blocker Attributes, Section 704(c) Items, or Imputed Interest or any other tax item in respect thereof shall be considered to be subject to the rules of the Code and the Treasury Regulations or the appropriate provisions of U.S. state or local tax law, as applicable, governing the use, limitation, and expiration of carryovers, carryforwards, carrybacks, or other tax items of the relevant type. If a carryover or carryback of any tax item includes a portion that is attributable to any Basis Adjustments, Common Basis, Blocker Attributes, Section 704(c) Items, or Imputed Interest (a “TRA Portion”) and another portion that is not (a “Non-TRA Portion”), such portions shall be considered to be used in accordance with the “with and without” methodology so that: (i) the amount of any Non-TRA Portion is deemed utilized first, followed by the amount of any TRA Portion (calculated by taking into account the provisions of Section 3.3(a) to the extent applicable); and (ii) in the case of a carryback of a Non-TRA Portion, such carryback shall not affect the original “with and without” calculation made in the prior Taxable Year. The Parties agree to treat (i) all Tax Benefit Payments (other than Imputed Interest) solely to the extent attributable to an Exchange and to the extent permitted by applicable law (A) as subsequent upward purchase price adjustments that give rise to further Basis Adjustments in respect of an applicable Exchange and (B) have the effect of creating additional Basis Adjustments arising in the Taxable Year in which the applicable Tax Benefit Payment is made and (ii) as a result, to the extent permitted by applicable law, any additional Basis Adjustments arising from such a Tax Benefit Payment shall be treated as giving rise to a Basis Adjustment in the Taxable Year in which the Tax Benefit Payment is made on an iterative basis continuing until any incremental Basis Adjustment is immaterial as reasonably determined by the TRA Holder Representative and the Corporation in good faith and in consultation with the Advisory Firm.

Section 2.5 Procedures; Amendments.

(a) Procedures. Each time the Corporation delivers an applicable Schedule to the TRA Holder Representative, under this Agreement, including any Amended Schedule delivered pursuant to Section 2.5(b), but excluding any Early Termination Schedule or amended Early Termination Schedule delivered pursuant to the procedures set forth in Section 4.2, the Corporation shall also: (x) deliver supporting schedules and work papers from an Advisory Firm and any additional materials reasonably requested by the TRA Holder Representative that are reasonably necessary in order to understand the calculations that were relevant for purposes of preparing the Schedule; and (y) allow the TRA Holder Representative and its advisors to have reasonable access to the appropriate representatives, as reasonably requested by the TRA Holder Representative, at the Corporation and the applicable Advisory Firm in connection with its review of such Schedule. Without limiting the generality of the preceding sentence, the Corporation shall ensure that any Tax Benefit Schedule that is delivered to the TRA Holder Representative, along with any supporting schedules and work papers, provides a reasonably detailed presentation of the calculation of the Actual Tax Liability (the “with” calculation) and the Hypothetical Tax Liability (the “without” calculation), and identifies any material assumptions or operating procedures or principles that were used for purposes of such calculations. An applicable Schedule shall become final and binding on the Parties thirty (30) days from the date on which the TRA Holder Representative first receives the applicable Schedule unless:

(i) the TRA Holder Representative within thirty (30) days after receiving the applicable Schedule provides the Corporation with written notice of a material objection to such Schedule that is made in good faith and that sets forth in reasonable detail the TRA Holder Representative’s material objection (an “Objection Notice”) or

(ii) the TRA Holder Representative provides a written waiver of its right to deliver an Objection Notice within the time period described in clause (i) above, in which case such Schedule becomes binding on the date the waiver from the TRA Representative is received by the Corporation.

In the event that the TRA Holder Representative timely delivers an Objection Notice pursuant to clause (i) above, and if the Corporation and the TRA Holder Representative, for any reason, are unable to successfully resolve the issues raised in the Objection Notice through good faith discussions within thirty (30) days after receipt by the Corporation of the Objection Notice, the Corporation and the TRA Holder Representative shall employ the reconciliation procedures as described in Section 7.9 of this Agreement (the “Reconciliation Procedures”).

(b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporation: (i) in connection with a Determination affecting such Schedule; (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was originally provided to the TRA Holder Representative; (iii) to comply with an Expert’s determination under the Reconciliation Procedures applicable to this Agreement; (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other tax item to such Taxable Year; (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year; or (vi) to adjust a Basis Schedule to take into account any Tax Benefit Payments made pursuant to this Agreement (any such Schedule, an “Amended Schedule”). The Corporation shall provide any Amended Schedule to the TRA Holder Representative within thirty (30) calendar days of the occurrence of an event referred to in clauses (i) through (vi) of the preceding sentence, and any such Amended Schedule shall be subject to the procedures set forth in Section 2.05(a).

**ARTICLE III.  
TAX BENEFIT PAYMENTS**

Section 3.1 Timing and Amount of Tax Benefit Payments.

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(a) Timing and Amount of Payments to TRA Holders and Blocker TRA Holders. Except as provided in Section 3.4, and subject to Sections 3.2, 3.3 and 3.6, within ten (10) Business Days following the date on which each Tax Benefit Schedule becomes final in accordance with Section 2.5(a) of this Agreement, (i) the Corporation shall pay to each TRA Holder the Tax Benefit Payment as determined pursuant to Section 3.1(b) multiplied by the applicable TRA Holder Sharing Percentage, and (ii) if a Blocker Corporation has completed a Reorganization Transaction, the Corporation shall pay to each Blocker TRA Holder party to such Reorganization Transaction the Tax Benefit Payment as determined pursuant to Section 3.1(b) multiplied by the applicable Blocker TRA Holder Sharing Percentage; *provided*, that if any TRA Holder Sharing Percentage would otherwise be allocated to the Corporation as a result of a Reorganization Transaction, such percentage shall be deemed to be zero upon the occurrence of such Reorganization Transaction and the TRA Holder Representative shall revise such TRA Holder Sharing Percentage accordingly. Each such Tax Benefit Payment shall be made by wire transfer of immediately available funds to the bank account previously designated by such TRA Holder or as otherwise agreed by the Corporation and such TRA Holder. For the avoidance of doubt, (i) no Tax Benefit Payment shall be required to be made in respect of estimated tax payments, including, without limitation, estimated U.S. federal income tax payments, and (ii) without limiting the Corporation's ability to make offsets against Tax Benefit Payments with respect to a particular TRA Holder to the extent permitted by Section 3.5, the TRA Holders shall not be required under any circumstances to return any portion of any Tax Benefit Payment previously paid by the Corporation to the TRA Holders (including any portion of any Estimated Tax Benefit Payment or any Early Termination Payment). Notwithstanding anything to the contrary, in no event will the aggregate of the portions of the Tax Benefit Payment that are payable to the TRA Holders pursuant to this Section 3.1(a) exceed 100% of the Tax Benefit Payment.

(b) Amount of Payments. For purposes of this Agreement, a "Tax Benefit Payment" means an amount, not less than zero, equal to the sum of: (i) the Net Tax Benefit (including Imputed Interest, if any, calculated in respect of such amount); and (ii) the Actual Interest Amount and any Default Rate Interest with respect to the Net Tax Benefit described in (i).

(i) Net Tax Benefit. The "Net Tax Benefit" for a Taxable Year equals the amount of the excess, if any, of (x) 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over (y) the aggregate amount of all Tax Benefit Payments previously made under this Section 3.1. For the avoidance of doubt, without limiting the Corporation's ability to make offsets against Tax Benefit Payments to the extent permitted by Section 3.5, if the Cumulative Net Realized Tax Benefit as of the end of any Taxable Year is less than the aggregate amount of all Tax Benefit Payments previously made, no TRA Holder shall be required to return any portion of any Tax Benefit Payment previously made by the Corporation to such TRA Holder.

(ii) Cumulative Net Realized Tax Benefit. The "Cumulative Net Realized Tax Benefit" for a Taxable Year equals the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporation, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same periods. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination. The computation of the Cumulative Net Realized Tax Benefit shall be adjusted to reflect any applicable Determination with respect to any Realized Tax Benefits and/or Realized Tax Detriments.

(iii) Realized Tax Benefit. The "Realized Tax Benefit" for a Taxable Year equals the excess, if any, of (a) the Hypothetical Tax Liability over (b) the Actual Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

(iv) Realized Tax Detriment. The "Realized Tax Detriment" for a Taxable Year equals the excess, if any, of (a) the Actual Tax Liability over (b) the Hypothetical Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority

of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

(v) Imputed Interest. The Parties acknowledge that the principles of Sections 1272, 1274, or 483 of the Code, as applicable, and the principles of any similar provision of U.S. state and local tax law, may, as applicable, apply to cause a portion of any payments by the Corporation to a TRA Holder under this Agreement to be treated as imputed interest ("Imputed Interest"). For the avoidance of doubt, the deduction for the amount of Imputed Interest, if any, as determined with respect to any payments made by the Corporation to a TRA Holder shall be excluded in determining the Hypothetical Tax Liability for purposes of calculating Realized Tax Benefits and Realized Tax Detriments pursuant to this Agreement.

(vi) Actual Interest Amount. Subject to Section 3.4, the "Actual Interest Amount" calculated in respect of the Net Tax Benefit for a Taxable Year, will equal an amount equal to interest calculated at the Agreed Rate from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the date on which the Corporation makes a timely Tax Benefit Payment to the TRA Holder on or before the Final Payment Date as determined pursuant to Section 3.1(a).

(vii) Default Rate Interest. In accordance with Section 5.2, in the event that the Corporation does not make timely payment of all or any portion of a Tax Benefit Payment to a TRA Holder on or before the Final Payment Date as determined pursuant to Section 3.1(a), the amount of any "Default Rate Interest" calculated and payable in accordance with Section 5.2 in respect of the Tax Benefit Payment (including previously accrued Imputed Interest and Actual Interest Amounts) for a Taxable Year will equal interest calculated at the Default Rate from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a) until the date on which the Corporation makes such Tax Benefit Payment to such TRA Holder.

(viii) The Corporation and the TRA Holders hereby acknowledge and agree that, as of the date of this Agreement and as of the date of any future Exchange that may be subject to this Agreement, the aggregate value of the Tax Benefit Payments cannot be reasonably ascertained for U.S. federal income or other applicable tax purposes. Notwithstanding anything to the contrary in this Agreement, with respect to each Exchange by any TRA Holder, if such TRA Holder notifies the Corporation in writing of a stated maximum selling price (within the meaning of Treasury Regulation 15A.453-1(c)(2)) to be applied with respect to such Exchange, the amount of the initial consideration received in connection with such Exchange and the aggregate Tax Benefit Payments to such TRA Holder in respect of such Exchange (other than amounts accounted for as interest under the Code) shall not exceed such stated maximum selling price.

(c) Interest. The provisions of Section 3.1(b) and Section 5.2 in respect of Default Rate Interest are intended to operate so that interest will effectively accrue (or in the case of Imputed Interest be treated as accruing solely for U.S. federal income or applicable state or local income tax purposes) in respect of the Net Tax Benefit (or Tax Benefit Payment in respect of any Actual Interest Amount or Default Rate Interest) for any Taxable Year as follows:

(i) first, solely for U.S. federal income or applicable state or local income tax purposes, at the applicable rate used to determine the amount of Imputed Interest under the Code (from the relevant Exchange Date or Reorganization Transaction Date until the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year and, if required under applicable law, through the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a));

(ii) second, at the Agreed Rate (from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a)); and

(iii) third, in accordance with Section 5.2, at the Default Rate (from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.1(a) until the date on which the Corporation makes the relevant Tax Benefit Payment to the applicable TRA Holder).



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Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in the duplicative payment of any amount (including interest) that may be required under this Agreement and the provisions of this Agreement shall be consistently interpreted and applied in accordance with that intent.

Section 3.3 Late Payments. If for any reason the Corporation is not able to timely and fully satisfy its payment obligations under this Agreement in respect of a particular Taxable Year, then Default Rate Interest will begin to accrue pursuant to Section 5.2 (and, for the avoidance of doubt, shall continue to accrue pursuant to Section 5.2 until the Tax Benefit Payments have been made in full without regard to the provisions of this Section 3.3) and the Corporation and other Parties agree that (i) the Corporation shall pay the Tax Benefit Payments due in respect of such Taxable Year to each TRA Holder pro rata in proportion to the amount of such Tax Benefit Payments, without favoring one obligation over the other, and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments to all TRA Holders in respect of all prior Taxable Years have been made in full.

Section 3.4 Optional Estimated Tax Benefit Payment Procedure. As long as the Corporation is current in respect of its payment obligations owed to each TRA Holder pursuant to this Agreement and there are no delinquent Tax Benefit Payments (including interest thereon) outstanding in respect of prior Taxable Years for any TRA Holder, the Corporation may, at any time on or after the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for a Taxable Year and at the Corporation's option, in its sole discretion, make one or more estimated payments to the TRA Holders in respect of any anticipated amounts to be owed with respect to a Taxable Year to the TRA Holders pursuant to Section 3.1 of this Agreement (any such estimated payment referred to as an "Estimated Tax Benefit Payment"); *provided* that any Estimated Tax Benefit Payment made to a TRA Holder pursuant to this Section 3.4 is matched by a proportionately equal Estimated Tax Benefit Payment to all other TRA Holders then entitled to a Tax Benefit Payment. Any Estimated Tax Benefit Payment made under this Section 3.4 shall be paid by the Corporation to the TRA Holders and applied against the final amount of any Tax Benefit Payment to be made pursuant to Section 3.1. The payment of an Estimated Tax Benefit Payment by the Corporation to the TRA Holders pursuant to this Section 3.4 shall also terminate the obligation of the Corporation to make payment of any Actual Interest Amount that might have otherwise accrued with respect to the proportionate amount of the Tax Benefit Payment that is being paid in advance of the applicable Tax Benefit Schedule being finalized pursuant to Section 2.5. Upon the making of any Estimated Tax Benefit Payment pursuant to this Section 3.4, the amount of such Estimated Tax Benefit Payment shall first be applied to any estimated Actual Interest Amount, and then applied to the remaining residual amount of the Tax Benefit Payment to be made pursuant to Section 3.1. In determining the final amount of any Tax Benefit Payment to be made pursuant to Section 3.1, and for purposes of finalizing the Tax Benefit Schedule pursuant to Section 2.5, the amount of any Estimated Tax Benefit Payments that may have been made with respect to the Taxable Year shall be increased if the finally determined Tax Benefit Payment for a Taxable Year exceeds the Estimated Tax Benefit Payments made for such Taxable Year, with such increase being paid by the Corporation to the TRA Holders along with an appropriate Actual Interest Amount (and any Default Rate Interest) in respect of the amount of such increase (a "True-Up"). If the Estimated Tax Benefit Payment to a TRA Holder for a Taxable Year exceeds the finally determined Tax Benefit Payment to the TRA Holder for such Taxable Year, such excess shall be applied to reduce the amount of any subsequent future Tax Benefit Payments (including Estimated Tax Benefit Payments, if any) to be paid by the Corporation to such TRA Holder. As of the date on which any Estimated Tax Benefit Payments are made, and as of the date on which any True-Up is made, all such payments shall be made in the same manner and subject to the same terms and conditions as otherwise contemplated by Section 3.1 and all other applicable terms of this Agreement. For the avoidance of doubt, as is the case with Tax Benefit Payments made by the Corporation to the TRA Holders pursuant to Section 3.1, the Parties intend to treat the amount of any Estimated Tax Benefit Payments made pursuant to this Section 3.4 that are attributable to an Exchange in part as subsequent upward purchase price adjustments that give rise to Basis Adjustments in the Taxable Year of payment to the extent permitted by applicable law and as of the date on which such payments are made (exclusive of any amounts treated as Imputed Interest); *provided* that any additional Basis Adjustments arising from an Estimated Tax Benefit Payment will be determined on an iterative

basis continuing until any incremental Basis Adjustment is immaterial as determined by the TRA Holder Representative and the Corporation in good faith and in consultation with the Advisory Firm.

Section 3.5 Overpayments. To the extent the Corporation makes any Tax Benefit Payment to a TRA Holder in respect of a particular Taxable Year in an amount in excess of the amount of such payment that should have been made to such TRA Holder in respect of such Taxable Year (taking into account this Article III) under the terms of this Agreement, then such excess shall be applied to reduce the amount of any subsequent future Tax Benefit Payments (including Estimated Tax Benefit Payments, if any) to be paid by the Corporation to such TRA Holder and such TRA Holder shall not receive any further Tax Benefit Payments (including Estimated Tax Benefit Payments, if any) until such TRA Holder has foregone an amount of Tax Benefit Payments equal to such excess. The amount of any excess Tax Benefit Payment shall be deemed to have been paid by the Corporation to the relevant TRA Holders on the original due date for the filing of the subsequent Tax Return to which the excess Tax Benefit Payment relates for purposes of determining the Actual Interest Amount to which such relevant TRA Holders shall be entitled. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the TRA Holders shall not be required, under any circumstances, to return any portion of any Tax Benefit Payment previously paid by the Corporation to the TRA Holders (including any portion of any Estimated Tax Benefit Payment or any Early Termination Payment).

Section 3.6 Threshold Exchange. Notwithstanding anything to the contrary herein, any and all Tax Benefit Payments that would otherwise be made pursuant to this Agreement to a TRA Holder shall be held by the Corporation for the benefit of such TRA Holder until such time as such TRA Holder has exchanged Units in one or more Exchanges equal to 5% of the Units held by such TRA Holder determined prior to the Business Combination (such Units, the “Threshold Exchange Units”). Promptly following the time such TRA Holder has exchanged, in the aggregate, a number of Units equal to or exceeding the Threshold Exchange Units for such TRA Holder, such withheld amount shall be paid by the Corporation to such TRA Holder as a Tax Benefit Payment as provided in Section 3.1(a).

#### **ARTICLE IV. TERMINATION**

##### **Section 4.1 Early Termination of Agreement; Breach of Agreement.**

(a) Corporation’s Early Termination Right. With the approval of a majority of the independent directors serving on its Board of Directors, the Corporation may completely terminate this Agreement, as and to the extent provided herein, with respect to all amounts payable to the TRA Holders pursuant to this Agreement by paying to the TRA Holders the Early Termination Payments; *provided* that Early Termination Payments may be made pursuant to this Section 4.1(a) only if made to all TRA Holders that are entitled to such a payment, and *provided further*, that the Corporation may withdraw any notice to execute its termination rights under this Section 4.1(a) prior to the time at which any Early Termination Payment has been paid. Upon the Corporation’s payment of the Early Termination Payments, the Corporation shall not have any further payment obligations under this Agreement, other than with respect to any: (i) prior Tax Benefit Payments that are due and payable under this Agreement but that still remain unpaid as of the date of the Early Termination Notice and that remain unpaid as of the payment of the Early Termination Payments (which Tax Benefit Payments shall not be included in the Early Termination Payments); and (ii) current Tax Benefit Payments due for the Taxable Year ending on or including the date of the Early Termination Notice (except to the extent that the amount described in clause (ii) is included in the calculation of the Early Termination Payments or is included in clause (i)) that remain unpaid as of the payment of the Early Termination Payments. If an Exchange or Reorganization Transaction subsequently occurs with respect to Units (including Units held by Blocker Corporations) for which the Corporation has exercised its termination rights under this Section 4.1(a) and paid all amounts owed in connection with the exercise of such rights, the Corporation shall have no obligations under this Agreement with respect to such Exchange or Reorganization Transaction.

(b) Acceleration Upon Change of Control. In the event of a Change of Control, all obligations hereunder shall be accelerated and such obligations shall be calculated pursuant to this Article IV as if an Early Termination Notice had been delivered on the closing date of the Change of Control and utilizing the Valuation Assumptions by substituting the phrase “the closing date of a Change of Control” in each place where the phrase “Early Termination Effective Date” appears. Such obligations shall include, without duplication, but shall not be limited to, (i) the Early Termination Payments calculated as if an Early Termination Notice had been delivered on the closing date of the Change of Control, (ii) any Tax Benefit Payments agreed to by the Corporation and the TRA Holders as due and payable but unpaid as of the Early Termination Notice (which Tax Benefit Payments shall not be included in the Early Termination Payments) and that remain unpaid as of the payment of the Early Termination Payments, and (iii) any Tax Benefit Payments due for any Taxable Year ending prior to, with or including the closing date of a Change of Control unpaid as of the Early Termination Notice (except to the extent that any amounts described in clause (iii) are included in the Early Termination Payments or are included in clause (ii)) and that remain unpaid as of the payment of the Early Termination Payments. For the avoidance of doubt, Sections 4.2 and 4.3 shall apply to a Change of Control, *mutadis mutandis*.

(c) Acceleration Upon Material Breach of Agreement. In the event that the Corporation materially breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due (subject to the remaining provisions of this Section 4.1(c)), failure to honor any other material obligation required hereunder, or by operation of law as a result of the rejection of this Agreement in a case commenced under Title 11 of the United States Code (11 U.S.C. § 101 et seq.) (the “Bankruptcy Code”) or otherwise (“Material Breach”), then all obligations of the Corporation hereunder shall be accelerated and become immediately due and payable and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such notice of acceleration (or, in the case of any proceeding under the Bankruptcy Code or other insolvency statute, on the date of such breach) and shall include, but not be limited to: (i) the Early Termination Payments calculated as if an Early Termination Notice had been delivered on the date of such acceleration; (ii) any prior Tax Benefit Payments that are due and payable under this Agreement but that still remain unpaid as of the date of such acceleration (which Tax Benefit Payments shall not be included in the Early Termination Payments) and that remain unpaid as of the payment of the Early Termination Payments; and (iii) any current Tax Benefit Payments due for the Taxable Year ending with or including the date of such acceleration (except to the extent included in the Early Termination Payments or in clause (ii)) and that remain unpaid as of the payment of the Early Termination Payments. Notwithstanding the foregoing, in the event that the Corporation breaches this Agreement and such breach is not a Material Breach, the TRA Holder Representative and each TRA Holder shall still be entitled to enforce all of its rights otherwise available under this Agreement, excluding, for the avoidance of doubt, seeking or otherwise obtaining an acceleration of amounts payable under this Agreement pursuant to this Section 4.1(c). For purposes of this Section 4.1(c), and subject to the following sentence, the Parties agree that the failure to make any payment due pursuant to this Agreement within three (3) months of the relevant Final Payment Date shall be deemed to be a Material Breach, and that it will not be considered to be a Material Breach to make a payment due pursuant to this Agreement within three (3) months of the relevant Final Payment Date. Notwithstanding anything in this Agreement to the contrary, it shall not be a Material Breach if the Corporation fails to make any Tax Benefit Payment within three (3) months of the relevant Final Payment Date to the extent that the Corporation has insufficient funds or cannot make such payment as a result of obligations imposed in connection with the Senior Obligations or under applicable law, and cannot obtain sufficient funds to make such payments by taking commercially reasonable actions or would become insolvent as a result of making such payment; provided that the interest provisions of Section 5.2 shall apply to such late payment (unless the Corporation does not have sufficient funds to make such payment as a result of limitations imposed by any Senior Obligations, in which case Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate); and further provided that such payment obligation shall nonetheless accrue for the benefit of the TRA Holders and the Corporation shall make such payment at the first opportunity that it has sufficient funds and is otherwise able to make such payment. For the avoidance of doubt, a Reconciliation Dispute (including any delay in payment as a result thereof) will not constitute a Material Breach of this Agreement.

Section 4.2 Early Termination Notice. If the Corporation chooses to exercise its right of early termination under Section 4.1 above, the Corporation shall deliver to the TRA Holder Representative a notice of the Corporation's decision to exercise such right (an "Early Termination Notice"). Upon delivery of the Early Termination Notice or the occurrence of an event described in Sections 4.1(b) or 4.1(c), the Corporation shall deliver a schedule developed in consultation with the Advisory Firm (the "Early Termination Schedule") showing in reasonable detail the calculation of the Early Termination Payment. The Corporation shall also (x) deliver to the TRA Holder Representative supporting schedules and work papers from an Advisory Firm, and any additional materials reasonably requested by the TRA Holder Representative that are reasonably necessary in order to understand the calculations that were relevant for purposes of preparing the Early Termination Schedule; and (y) allow the TRA Holder Representative and its advisors to have reasonable access to the appropriate representatives at the Corporation and the applicable Advisory Firm as determined by the Corporation or as reasonably requested by the TRA Holder Representative in connection with a review of such Early Termination Schedule. The Early Termination Schedule shall become final and binding on each Party thirty (30) days from the first date on which the TRA Holder Representative received such Early Termination Schedule unless:

(i) the TRA Holder Representative within thirty (30) days after receiving the Early Termination Schedule, provides the Corporation with written notice of a material objection to such Early Termination Schedule made in good faith and setting forth in reasonable detail the TRA Holder Representative's material objection (a "Termination Objection Notice"); or

(ii) the TRA Holder Representative provides a written waiver of such right of a Termination Objection Notice within the period described in clause (i) above, in which case such Early Termination Schedule becomes binding on the date the waiver from the TRA Holder Representative is received by the Corporation.

In the event that the TRA Holder Representative timely delivers a Termination Objection Notice pursuant to clause (i) above, and if the Parties, for any reason, are unable to successfully resolve the issues raised in the Termination Objection Notice within thirty (30) days after receipt by the Corporation of the Termination Objection Notice, the Corporation and the TRA Holder Representative shall employ the Reconciliation Procedures. The date on which the Early Termination Schedule becomes final in accordance with this Section 4.2 shall be the "Early Termination Reference Date."

#### Section 4.3 Payment Upon Early Termination.

(a) Timing of Payment. Within ten (10) Business Days after the Early Termination Reference Date, the Corporation shall pay to each TRA Holder an amount equal to the Early Termination Payment for such TRA Holder. Such Early Termination Payment shall be made by the Corporation by wire transfer of immediately available funds to a bank account or accounts designated by such TRA Holder or as otherwise agreed by the Corporation and such TRA Holder.

(b) Amount of Payment. The "Early Termination Payment" payable to a TRA Holder pursuant to Section 4.3(a) shall equal the present value, discounted at the Early Termination Rate as determined as of the Early Termination Reference Date, of all Tax Benefit Payments that would be required to be paid (and which have not yet been paid prior to the Early Termination Effective Date) by the Corporation to such TRA Holder, whether payable with respect to Units that were Exchanged prior to the Early Termination Effective Date or on or after the Early Termination Effective Date (including Units held by Blocker Corporations that have not consummated a Reorganization Transaction, in which case, the relevant Blocker Corporation shall be treated as having Exchanged its Units in the manner set forth in the Valuation Assumptions and shall be treated as an Exchange TRA Holder (and not a Blocker TRA Holder) with respect to such Units), beginning from the Early Termination Effective Date and using the Valuation Assumptions. The computation of the Early Termination Payment shall be subject to the Reconciliation Procedures.

**ARTICLE V.  
SUBORDINATION AND LATE PAYMENTS**

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payments or Early Termination Payments required to be made by the Corporation to the TRA Holders under this Agreement shall rank subordinate and junior in right of payment to any principal, interest, or other amounts due and payable in respect of any obligations owed in respect of secured or unsecured indebtedness for borrowed money of the Corporation and its Subsidiaries ("Senior Obligations") and shall rank *pari passu* in right of payment with all current or future unsecured obligations of the Corporation that are not Senior Obligations. To the extent that any payment under this Agreement is not permitted to be made at the time payment is due as a result of this Section 5.1 and the terms of the agreements governing Senior Obligations, such payment obligation nevertheless shall accrue for the benefit of the TRA Holders and the Corporation shall make any such payments at the first opportunity that such payments are permitted to be made in accordance with the terms of the Senior Obligations. The Corporation and the LLC shall not, and shall cause their Subsidiaries to not, without the prior written consent of the TRA Holder Representative, enter into or amend the terms of any financing agreement or Senior Obligations if the terms of such agreement or amendment would further restrict (beyond the restrictions applicable in financing agreements as of the date of this Agreement) the Corporation's ability to make payments owed under the terms of this Agreement (including as a result of any restriction on the ability of the Corporation's Subsidiaries to make distributions or other payments to the Corporation to fund amounts payable under this Agreement).

Section 5.2 Late Payments by the Corporation. Except as otherwise provided in this Agreement, the amount of all or any portion of any Tax Benefit Payment or Early Termination Payment not made to the TRA Holders when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate and commencing from the Final Payment Date on which such Tax Benefit Payment or Early Termination Payment was first due and payable to the date of actual payment of such Tax Benefit Payment or Early Termination Payment; *provided* that if any Tax Benefit Payment or Early Termination Payment is not made to the TRA Holders when due under the terms of this Agreement as a result of Section 5.1 and the terms of the agreements governing Senior Obligations, any such interest shall be computed at the Agreed Rate and not the Default Rate.

**ARTICLE VI.  
TAX MATTERS; CONSISTENCY; COOPERATION**

Section 6.1 Participation in the Corporation's Tax Matters. Except as otherwise provided herein or the LLC Agreement, the Corporation shall have full responsibility for, and sole discretion over, all tax matters concerning the Corporation and its Subsidiaries including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any audit, contest, or other proceeding pertaining to taxes; *provided, however*, that the Corporation shall not settle or fail to contest any issue pertaining to Covered Taxes that is reasonably expected to adversely affect the TRA Holders' rights and obligations under this Agreement without the consent of the TRA Holder Representative, such consent not to be unreasonably withheld, conditioned, or delayed. The Corporation shall notify the TRA Holder Representative of, and keep it reasonably informed with respect to, any tax audit or other tax contest of the Corporation the outcome of which is reasonably expected to affect the Tax Benefit Payments payable to any TRA Holder under this Agreement and the TRA Holder Representative shall have the right to (i) discuss with the Corporation, and provide input and comment to the Corporation regarding, any portion of any such tax audit or other tax contest and (ii) participate in, at the TRA Holder Representative's expense, any such portion of any such tax audit or other tax contest, in each case, to the extent it reasonably relates to issues the resolution of which would reasonably be expected to affect the Tax Benefit Payments payable to any TRA Holder under this Agreement. To the extent there is a conflict between this Agreement and either the Transaction Agreement or the LLC Agreement relating to tax matters concerning Covered Taxes and the Corporation, including preparation, filing or amending of any Tax Return and

defending, contesting or settling any issue pertaining to taxes, this Agreement shall control solely with respect to the matters governed by this Agreement.

Section 6.2 Consistency. Except as otherwise required by applicable law, all calculations and determinations made hereunder, including, without limitation, any Basis Adjustments, the determination of any deductions arising from Common Basis or Section 704(c) Items, the Schedules or the determination of any Realized Tax Benefits or Realized Tax Detriments, shall be made in accordance with the elections, methodologies or positions taken by the Corporation and the LLC on their respective Tax Returns. Each TRA Holder shall prepare its Tax Returns in a manner that is consistent with the terms of this Agreement and any related calculations or determinations that are made hereunder, including, without limitation, the Schedules provided under this Agreement, unless otherwise required by applicable law. In the event that an Advisory Firm or Expert is used and is replaced with another Advisory Firm or Expert, such replacement Advisory Firm or Expert shall perform its services under this Agreement using procedures and methodologies consistent with the previous Advisory Firm or Expert, unless otherwise required by applicable law or unless the Corporation and the TRA Holder Representative agree to the use of other procedures and methodologies.

Section 6.3 Cooperation. The TRA Holder Representative and each TRA Holder, on the one hand, and the Corporation, on the other hand, shall (i) furnish to the other in a timely manner such information, documents and other materials as the other may reasonably request for purposes of making, reviewing, or approving any determination or computation necessary or appropriate under or with respect to this Agreement, preparing any Tax Return, or contesting or defending any audit, examination, controversy, or other proceeding with any Taxing Authority, (ii) make itself available to the other and its representatives to provide explanations of documents and materials and such other information as may be reasonably requested in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter. Subject to Section 6.1, the Corporation shall provide assistance as reasonably requested by any TRA Holder or the TRA Holder Representative on behalf of any TRA Holder in connection with such TRA Holder's tax or financial reporting and/or the consummation of any assignment or transfer of any of its rights and/or obligations under this Agreement, including without limitation, providing any information or executing any documentation. The requesting Party shall reimburse the other Party for any reasonable and documented out-of-pocket costs and expenses incurred by such other Party pursuant to this Section 6.3.

## ARTICLE VII. MISCELLANEOUS

Section 7.1 Notices.<sup>2</sup> All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx or other nationally recognized overnight delivery service, or (iv) when delivered by email during normal business hours (in each case in this clause (iv), solely if receipt is confirmed, but excluding any automated reply, such as an out-of-office notification), addressed as follows:

If to the Corporation, to:

[•]

with a copy (which shall not constitute notice to the Corporation) to:

[•]

If to the TRA Holder Representative:

[•]

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<sup>2</sup> Note to Draft: Notice information to come.

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with a copy (which shall not constitute notice to the TRA Holder Representative) to:

[•]

Any Party may change its address, fax number or e-mail address by giving each of the other Parties written notice thereof in the manner set forth above.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Assignments; Amendments; Successors; No Waiver.

(a) Assignment. Each TRA Holder may assign, sell, pledge, or otherwise alienate or transfer any TRA Right without the consent of the Corporation, to any Person; *provided*, such Person executes and delivers a Joinder agreeing to succeed to the applicable TRA Rights and to become a Party and TRA Holder for all purposes of this Agreement (the "Joinder Requirement"). The TRA Holder Representative shall update the TRA Holder Sharing Percentages and Blocker TRA Holder Sharing Percentages, as applicable, to reflect any such transfer accordingly. For the avoidance of doubt, if a TRA Holder transfers Units in accordance with the terms of the LLC Agreement but does not assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, such TRA Holder shall continue to be entitled to receive the Tax Benefit Payments arising in respect of a subsequent Exchange of such Units (and any such transferred Units shall be separately identified, so as to facilitate the determination of Tax Benefit Payments hereunder). The Corporation may not assign any of its rights or obligations under this Agreement to any Person (other than any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation) without the prior written consent of each of the TRA Holders (and any purported assignment without such consent shall be null and void).

(b) Amendments. No provision of this Agreement may be amended unless such amendment is approved in writing by (i) the Corporation, (ii) the TRA Holder Representative, and (iii) TRA Holders who would be entitled



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to receive at least fifty (50) percent of the Early Termination Payments payable to all TRA Holders in the event the Corporation exercised its rights pursuant to Section 4.1(a) as of the later of the most recent Exchange Date or the most recent Reorganization Transaction, in which case such amendment shall be permitted. Notwithstanding the foregoing, no such amendment shall be effective if such amendment would have a disproportionate adverse impact on the payments certain TRA Holders will or may receive under this Agreement unless all such disproportionately impacted TRA Holders consent in writing to such amendment (such consent not to be unreasonably withheld, conditioned or delayed). No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective.

(c) Successors. Except as provided in Section 7.6(a), all of the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to (i) assume and agree to perform this Agreement, in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place and (ii) become a Party to this Agreement.

(d) Waiver. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.

Section 7.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

### Section 7.8 Resolution of Disputes.

(a) Except for Reconciliation Disputes subject to Section 7.9, any and all disputes which cannot be settled amicably after good-faith negotiation, including any ancillary claims of any Party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance, or non-performance of this Agreement (including the validity, scope, and enforceability of this arbitration provision) (each a “Dispute”) shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Administered Arbitration (the “Rules”) by three arbitrators, of which the Corporation shall appoint one arbitrator and the TRA Holder Representative shall appoint one arbitrator in accordance with the “screened” appointment procedure provided in Rule 5.4. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of the arbitration shall be [New York, New York].

(b) Notwithstanding the provisions of paragraph (a), any Party may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling another Party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this paragraph (b), each Party (i) expressly consents to the application of paragraph (c) of this Section 7.8 to any such action or proceeding, and (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate. For the avoidance of doubt, this Section 7.8 shall not apply to Reconciliation Disputes to be settled in accordance with the procedures set forth in Section 7.9.

(c) Each Party irrevocably consents to service of process by means of notice in the manner provided for in Section 7.1. Nothing in this Agreement shall affect the right of any Party to serve process in any other manner permitted by law.

(d) **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 THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

(e) In the event the parties are unable to agree whether a dispute between them is a Reconciliation Dispute subject to the dispute resolution procedure set forth in Section 7.9 or a Dispute subject to the dispute resolution procedure set forth in this Section 7.8, such disagreement shall be decided and resolved in accordance with the procedure set forth in this Section 7.8.

Section 7.9 Reconciliation. In the event that the Corporation and the TRA Holder Representative (or any applicable TRA Holder) are unable to resolve a disagreement with respect to a Schedule prepared in accordance with the procedures set forth in Section 2.5, or with respect to an Early Termination Schedule prepared in accordance with the procedures set forth in Section 4.2, within the relevant time period designated in this Agreement (a “Reconciliation Dispute”), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the “Expert”) in the particular area of disagreement mutually acceptable to the disputing Parties. The Expert shall be a partner or principal in a nationally recognized accounting firm, and unless the Corporation and the TRA Holder Representative (or any applicable TRA Holder) agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation, the TRA Holder Representative (or any applicable TRA Holder), or other actual or potential conflict of interest. If the disputing Parties are unable to agree on an Expert within fifteen (15) days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the selection of an Expert shall be treated as a Dispute subject to Section 7.8 and an arbitration panel shall pick an Expert from a nationally recognized accounting firm that does not have any material relationship with the Corporation, the TRA Holder Representative (or any applicable TRA Holder), or other actual or potential conflict of interest. The Expert shall resolve any disputed matter relating to any Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporation except as provided in the next sentence. The Corporation and the applicable TRA Holder(s) shall bear their own costs and expenses of such proceeding, unless (i) the Expert adopts the TRA Holder Representative or applicable TRA Holder(s)’s position, in which case the Corporation shall reimburse the TRA Holder Representative or applicable TRA Holder(s) for any reasonable and documented out-of-pocket costs and expenses in such proceeding (including for the avoidance of doubt any costs and expenses incurred by the TRA Holder Representative or any applicable TRA Holder(s) relating to the engagement of the Expert or amending any applicable Tax Return), or (ii) the Expert adopts the Corporation’s position, in which case the applicable TRA Holder(s) (or the TRA Holder Representative on behalf of such TRA Holder(s)) shall reimburse the Corporation for any reasonable and documented out-of-pocket costs and expenses in such proceeding (including for the avoidance of doubt costs and expenses incurred by the Corporation relating to the engagement of the Expert or amending any applicable Tax Return). The Corporation may withhold payments under this Agreement to collect amounts due under the preceding sentence. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporation, the TRA Holder Representative and the TRA Holders and may be entered and enforced in any court having competent jurisdiction.

Section 7.10 Withholding. The Corporation, the LLC, and their respective affiliates, shall be entitled to deduct and withhold from any payment that is payable to any TRA Holder (or other applicable person) pursuant to this Agreement any taxes or other amounts as the Corporation is required to deduct and withhold with respect to the making of any such payment under the Code or any provision of U.S. state, local or foreign tax law. Any

such deducted or withheld taxes or other amounts, to the extent paid over to the appropriate Taxing Authority or other governmental entity shall be treated for all purposes of this Agreement as having been paid to the relevant TRA Holder (or any other person) in respect of which such deduction or withholding was made. Each TRA Holder or other recipient of any payments hereunder shall provide the Corporation, the LLC, or other applicable withholding agent with any applicable tax forms, including IRS Form W-9 or the appropriate series of IRS Form W-8, as applicable, or any other information or certifications reasonably requested by the Corporation in connection with determining whether any such deductions and withholdings are required under the Code or any provision of U.S. state, local or foreign tax law.

Section 7.11 Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporation is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Section 1501 or other applicable Sections of the Code governing affiliated or consolidated groups, or any corresponding provisions of U.S. state or local tax law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments, and other applicable items hereunder shall be computed with reference to the consolidated Covered Taxes of the group as a whole.

(b) If the Corporation, its successor in interest or any member of a group described in Section 7.11(a) or any member of the LLC Group transfers one or more Reference Assets to a corporation (or a Person classified as a corporation for U.S. federal income tax purposes) with which such entity does not file a consolidated Tax Return pursuant to Section 1501 of the Code, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment due hereunder, shall be treated as having disposed of such Reference Asset in a fully taxable transaction on the date of such transfer. The consideration deemed to be received by such entity shall be equal to the fair market value of the transferred Reference Asset as determined by a valuation expert mutually agreed upon by the Corporation and the TRA Holder Representative plus, without duplication, (i) the amount of debt to which any such Reference Assets is subject, in the case of a transfer of an encumbered Reference Asset or (ii) the amount of debt allocated to any such Reference Asset, in the case of a transfer of a partnership interest. For purposes of this Section 7.11, a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership. Notwithstanding anything to the contrary set forth herein, if the Corporation or any other entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers its assets pursuant to a transaction that qualifies as a "reorganization" (within the meaning of Section 368(a) of the Code) in which such entity does not survive or pursuant to any other transaction to which Section 381(a) of the Code applies, the transfer will not cause such entity to be treated as having transferred any assets to a corporation (or a Person classified as a corporation for U.S. income tax purposes) pursuant to this Section 7.11(b).

Section 7.12 Change in Law. Notwithstanding anything herein to the contrary, if, as a result of or, in connection with an actual or proposed change in law, a TRA Holder reasonably believes that the existence of this Agreement could cause adverse tax consequences to such TRA Holder or any direct or indirect owner of such TRA Holder, then at the written election of such TRA Holder in its sole discretion (in an instrument signed by such TRA Holder and delivered to the Corporation and the TRA Holder Representative) and to the extent specified therein by such TRA Holder, this Agreement either (i) shall cease to have further effect and shall not apply to such TRA Holder after a date specified by such TRA Holder or (ii) may be amended by the Parties in a manner reasonably determined by such TRA Holder, *provided* that such amendment shall not result in a material adverse impact to the Corporation's rights and obligations under this Agreement, including an increase in or acceleration of any payments owed by the Corporation under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section 7.13 Interest Rate Limitation. Notwithstanding anything to the contrary contained herein, the interest paid or agreed to be paid hereunder with respect to amounts due to any TRA Holder hereunder shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If any

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TRA Holder shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the Tax Benefit Payment, Estimated Tax Benefit Payment or Early Termination Payment, as applicable (but in each case exclusive of any component thereof comprising interest) or, if it exceeds such unpaid non-interest amount, refunded to the Corporation. In determining whether the interest contracted for, charged, or received by any TRA Holder exceeds the Maximum Rate, such TRA Holder 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 payment obligations owed by the Corporation to such TRA Holder hereunder. Notwithstanding the foregoing, it is the intention of the Parties to conform strictly to any applicable usury laws.

Section 7.14 Independent Nature of Rights and Obligations. The rights and obligations of each TRA Holder hereunder are several and not joint with the rights and obligations of any other Person. A TRA Holder shall not be responsible in any way for the performance of the obligations of any other Person hereunder, nor shall a TRA Holder have the right to enforce the rights or obligations of any other Person hereunder (other than the Corporation). Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any TRA Holder pursuant hereto or thereto, shall be deemed to constitute the TRA Holders acting as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the TRA Holders are in any way acting in concert or as a group with respect to such rights or obligations or the transactions contemplated hereby, and the Corporation acknowledges that the TRA Holders are not acting in concert or as a group and will not assert any such claim with respect to such rights or obligations or the transactions contemplated hereby.

Section 7.15 LLC Agreement. This Agreement shall be treated as part of the LLC Agreement as described in Section 761(c) of the Code and Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

Section 7.16 TRA Holder Representative. By executing this Agreement, each of the TRA Holders shall be deemed to have irrevocably constituted and appointed GTCR Management XI, LLC (in the capacity described in this Section 7.16 and each successor as provided below, the “TRA Holder Representative”) as its agent and attorney in fact with full power of substitution to act from and after the date hereof and to do any and all things and execute any and all documents on behalf of such TRA Holders which may be necessary, convenient or appropriate to facilitate any matters under this Agreement, including but not limited to, and unless otherwise provided by this Agreement: (i) execution of the documents and certificates required pursuant to this Agreement; (ii) receipt and forwarding of notices and communications pursuant to this Agreement; (iii) administration of the provisions of this Agreement; (iv) giving or agreeing to, on behalf of such TRA Holders, any and all consents, waivers, amendments or modifications deemed by the TRA Holder Representative, in its sole and absolute discretion, to be necessary or appropriate under this Agreement and the execution or delivery of any documents that may be necessary or appropriate in connection therewith; (v) taking actions the TRA Holder Representative is expressly authorized to take pursuant to the other provisions of this Agreement; (vi) negotiating and compromising, on behalf of such TRA Holders, any dispute that may arise under, and exercising or refraining from exercising any remedies available under, this Agreement or any other agreement contemplated hereby and executing, on behalf of such TRA Holders, any settlement agreement, release or other document with respect to such dispute or remedy; and (vii) engaging attorneys, accountants, agents or consultants on behalf of such TRA Holders in connection with this Agreement or any other agreement contemplated hereby and paying any fees related thereto. If the TRA Holder Representative is unwilling to so serve, then the person then-serving as the TRA Holder Representative shall be entitled to appoint its successor which such successor shall be subject to the approval of a majority of the TRA Holders. To the fullest extent permitted by law, none of the TRA Holder Representative, any of its Affiliates, or any of the TRA Holder Representative’s or Affiliate’s directors, officers, employees or other agents (each a “Covered Person”) shall be liable, responsible or accountable in damages or otherwise to any TRA Holder, the LLC, or the Corporation for damages arising from any action taken or omitted to be taken by the TRA Holder Representative or any other Person with respect to the LLC or the Corporation, except in the case of any action or omission which constitutes, with respect to such Person, willful misconduct or

fraud. Each of the Covered Persons may consult with legal counsel, accountants, and other experts selected by it, and any act or omission suffered or taken by it on behalf of the LLC or the Corporation or in furtherance of the interests of the LLC or the Corporation in good faith in reliance upon and in accordance with the advice of such counsel, accountants, or other experts shall create a presumption of the good faith and due care of such Covered Person with respect to such act or omission. Each of the Covered Persons may rely in good faith upon, and shall have no liability to the LLC, the Corporation or the TRA Holders for acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. For the avoidance of doubt, notwithstanding the foregoing, if a provision of this Agreement provides a right or entitlement of any kind to a TRA Holder, this Section 7.16 shall not override the TRA Holder's ability to exercise or enforce such right or enjoy such entitlement.

Section 7.17 Non-Effect of Other Tax Receivable Agreements. If the Corporation enters into any other agreement after the date hereof that obligates the Corporation to make payments to another party in exchange for tax benefits conferred upon the Corporation, the LLC, or any of their respective Subsidiaries, unless otherwise agreed by the TRA Holder Representative, such tax benefits and such payments shall be ignored for all purposes of this Agreement (including for purposes of calculating the Hypothetical Tax Liability and the Actual Tax Liability hereunder).

*[Signature Page Follows This Page]*

Annex F-27

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Agreement as of the date first written above.

**CORPORATION:**

[●]

By: \_\_\_\_\_  
Name:  
Title:

THE LLC:

[●]

By: \_\_\_\_\_  
Name:  
Title:

**TRA HOLDER REPRESENTATIVE:**

By: \_\_\_\_\_  
Name:  
Title:

**TRA HOLDER:**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit A**

**FORM OF JOINDER AGREEMENT**

This JOINDER AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_\_ (this “Joinder”), is delivered pursuant to that certain Tax Receivable Agreement, dated as of [·] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Tax Receivable Agreement”) by and among Vivid Seats Inc., a Delaware corporation (the “Corporation”), Hoya Intermediate, LLC, a Delaware limited liability company (the “LLC”), the TRA Holder Representative (as defined in the Tax Receivable Agreement), and each of the Exchange TRA Holders and the Blocker TRA Holders (each as defined in the Tax Receivable Agreement and, collectively, the “TRA Holders,” from time to time party thereto). Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Tax Receivable Agreement.

1. Joinder to the Tax Receivable Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to the Corporation, the undersigned hereby is and hereafter will be a TRA Holder under the Tax Receivable Agreement and a Party thereto, with all the rights, privileges and responsibilities of a TRA Holder thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the Tax Receivable Agreement as if it had been a signatory thereto as of the date thereof.
2. Incorporation by Reference. All terms and conditions of the Tax Receivable Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.
3. Address. All notices under the Tax Receivable Agreement to the undersigned shall be direct to:  
[Name]  
[Address]  
[City, State, Zip Code]  
Attn:  
Facsimile:  
E-mail:

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

**[NAME OF NEW PARTY]**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed as of the date first set forth above:

[•]

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit B**

**AGREEMENT AND PLAN OF REORGANIZATION**

This Agreement and Plan of Reorganization (“Agreement”) is entered into on [●], 2021, by and among Vivid Seats Inc., a Delaware corporation (“Vivid Seats”), VEPF V AIV VII Corp., a Delaware corporation (“VEPF V”), VEPF IV AIV IX Corp., a Delaware corporation (“VEPF IV”), GTCR-Tickets Blocker XI/C / B-Corp., a Delaware corporation (“Blocker XI/C,” and together with VEPF V and VEPF IV, the “Blockers” and each, a “Blocker”), GTCR Fund XI/C LP, a Delaware limited partnership (“Fund XI/C”), and GTCR-Tickets Blocker Acquisition LLC, a Delaware limited liability company (“Blocker Parent”). Vivid Seats, the Blockers, Fund XI/C and Blocker Parent are referred to collectively herein as the “Parties”.

WHEREAS, Vivid Seats has entered into that certain Transaction Agreement, dated as of [●], 2021, with Hoya Topco, LLC (“Topco”), Hoya Intermediate, LLC (“Intermediate”), Horizon Acquisition Corporation and Horizon Sponsor, LLC (the “Transaction Agreement”);

WHEREAS, in connection with the Transaction Agreement, Vivid Seats has entered into that certain Tax Receivable Agreement on [●], 2021 (the “Tax Receivable Agreement”), by and among Vivid Seats, Intermediate, the TRA Holder Representative (as defined in the Tax Receivable Agreement), and each of the Exchange TRA Holders and the Blocker TRA Holders (each as defined in the Tax Receivable Agreement), from time to time party thereto;

WHEREAS, pursuant to the Tax Receivable Agreement, Vivid Seats agreed to enter into this Agreement with the Blockers, Fund XI/C and Blocker Parent to provide for the mergers of the Blockers with and into Vivid Seats no later than three (3) years after the later of (i) the Closing (as defined in the Transaction Agreement) and (ii) the date of the first Secondary Sale (as defined in the Tax Receivable Agreement);

WHEREAS, Blocker Parent, VEPF V and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the VEPF V Merger (as defined below);

WHEREAS, Blocker Parent, VEPF IV and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the VEPF IV Merger (as defined below); and

WHEREAS, Fund XI/C, Blocker XI/C and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the Blocker XI/C Merger (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Mergers. Substantially in accordance with Section 9.8 of the Second Amended and Restated Limited Liability Company Agreement of Intermediate, the Parties shall, work together to effect (i) the merger of VEPF V with and into Vivid Seats, with Vivid Seats surviving such merger (the “VEPF V Merger”), (ii) the merger of VEPF IV with and into Vivid Seats, with Vivid Seats surviving such merger (the “VEPF IV Merger”), and (iii) the merger of Blocker XI/C with and into Vivid Seats, with Vivid Seats surviving such merger (the “Blocker XI/C Merger,” and together with the VEPF V Merger and the VEPF IV Merger, the “Mergers”), each on customary terms and conditions for mergers of this nature, such Merger to be completed no later than three (3) years after the later of (i) the Closing (as defined in the Transaction Agreement) and (ii) the date of the first Secondary Sale (as defined in the Tax Receivable Agreement).

2. Plans of Reorganization. Blocker Parent, VEPF V and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the VEPF V Merger, and hereby adopt it as such. Blocker Parent, VEPF IV and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the VEPF IV Merger, and hereby adopt it as such. Fund XI/C, Blocker XI/C and Vivid Seats intend that this Agreement constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 with respect to the Blocker XI/C Merger, and hereby adopt it as such.
3. Intended Tax Treatment. The Parties intend that each Merger will qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and that any rights received by the Blocker TRA Holders (as defined in the Tax Receivable Agreement) for payments to be received under the Tax Receivable Agreement will constitute the receipt of money or other property taxable to the Blocker TRA Holders under Section 356(a)(1) of the Code.
4. Further Assurances. Each Party hereby agrees to use reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable, consistent with applicable law to consummate and make effective the transactions contemplated hereby.
5. Headings. The headings in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provisions hereof.
6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties hereto with respect to such subject matter.
7. Severability. If, in any action to enforce this Agreement, any one or more of the covenants, agreements, conditions, provisions, or terms of this Agreement is, in any respect or to any extent (in whole or in part), held to be invalid, illegal or unenforceable for any reason, all remaining portions thereof which are not so held, and all other covenants, agreements, conditions, provisions, and terms of this Agreement, will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.
8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No Party may assign any rights or obligations hereunder without the prior written consent of the other Parties.
9. Amendment, Waiver and Termination. This Agreement may not be amended or terminated, and no provision hereof may be waived, except by a writing signed by each of the Parties.
10. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the Parties any rights or remedies hereunder.
11. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without reference to such State’s conflicts of law principles.
12. Counterparts; Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile, sent by email (including “.pdf”), or delivered by other electronic means will be valid and effective to bind the Party so signing.

*[Remainder of page intentionally blank; signature pages follow]*

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

**VIVID SEATS INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VEPF V AIV VII CORP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VEPF IV AIV IX CORP.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTCR-TICKETS BLOCKER ACQUISITION LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTCR-TICKETS BLOCKER XI/C / B-Corp.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GTCR FUND XI/C LP**

By: GTCR Partners XI/A&C LP  
Its: General Partner

By: GTCR Investment XI LLC  
Its: General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VIVID SEATS INC.  
2021 INCENTIVE AWARD PLAN**

**ARTICLE I.  
PURPOSE**

The Plan's purpose is to enhance the Company's ability to attract, retain and motivate persons who make (or are expected to make) important contributions to the Company by providing these individuals with equity ownership opportunities. Capitalized terms used in the Plan are defined in Article **XI**.

**ARTICLE II.  
ELIGIBILITY**

Service Providers are eligible to be granted Awards under the Plan, subject to the limitations described herein.

**ARTICLE III.  
ADMINISTRATION AND DELEGATION**

3.1 Administration. The Plan is administered by the Administrator. The Administrator has authority to determine which Service Providers receive Awards, grant Awards and set Award terms and conditions, subject to the conditions and limitations in the Plan. The Administrator also has the authority to take all actions and make all determinations under the Plan, to interpret the Plan and Award Agreements and to adopt, amend and repeal Plan administrative rules, guidelines and practices as it deems advisable. The Administrator may correct defects and ambiguities, supply omissions and reconcile inconsistencies in the Plan or any Award as it deems necessary or appropriate to administer the Plan and any Awards. The Administrator's determinations under the Plan are in its sole discretion and will be final and binding on all persons having or claiming any interest in the Plan or any Award. The Administrator may institute and determine the terms and conditions of an Exchange Program.

3.2 Appointment of Committees. To the extent Applicable Laws permit, the Board may delegate any or all of its powers under the Plan to one or more Committees or officers of the Company or any of its Subsidiaries. The Board may abolish any Committee or re-vest in itself any previously delegated authority at any time.

**ARTICLE IV.  
STOCK AVAILABLE FOR AWARDS**

4.1 Number of Shares. Subject to adjustment under Article **VII** and the terms of this Article **IV**, Awards may be made under the Plan covering up to the Overall Share Limit. Shares issued under the Plan may consist of authorized but unissued Shares, Shares purchased on the open market or treasury Shares.

4.2 Share Recycling. If all or any part of an Award expires, lapses or is terminated, exchanged for cash, surrendered to an Exchange Program, repurchased, canceled without having been fully exercised or forfeited, in any case, in a manner that results in the Company acquiring Shares at a price not greater than the price (as adjusted to reflect any Equity Restructuring) paid by the Participant for such Shares or not issuing any Shares covered by the Award, the unused Shares covered by the Award will, as applicable, become or again be available

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for Award grants under the Plan, provided, that, the Shares underlying the Non-Qualified Stock Options granted in connection with the Effective Date Option Awards shall not become or again be available for Awards under the Plan. Further, Shares delivered (either by actual delivery or attestation) to the Company by a Participant to satisfy the applicable exercise or purchase price of an Award and/or to satisfy any applicable tax withholding obligation (including Shares retained by the Company from the Award being exercised or purchased and/or creating the tax obligation) will, as applicable, become or again be available for Award grants under the Plan. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not count against the Overall Share Limit.

4.3 Incentive Stock Option Limitations. Notwithstanding anything to the contrary herein, no more than [●]<sup>1</sup> Shares may be issued pursuant to the exercise of Incentive Stock Options.

4.4 Substitute Awards. In connection with an entity's merger or consolidation with the Company or the Company's acquisition of an entity's property or stock, the Administrator may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its affiliate in accordance with Applicable Laws. Substitute Awards may be granted on such terms as the Administrator deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards will not count against the Overall Share Limit (nor shall Shares subject to a Substitute Award be added to the Shares available for Awards under the Plan as provided above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under the Plan. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided above); provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or Directors prior to such acquisition or combination.

4.5 Non-Employee Director Compensation. Notwithstanding any provision to the contrary in the Plan, the Administrator may establish compensation for non-employee Directors from time to time, subject to the limitations in the Plan. The Administrator will from time to time determine the terms, conditions and amounts of all such non-employee Director compensation in its discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation, or other compensation, and the value (determined as of the grant date in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) of Awards granted to a non-employee Director as compensation for services as a non-employee Director during any fiscal year of the Company may not exceed \$[ ], increased to \$[ ] of a non-employee Director's initial service as a non-employee Director. The Administrator may make exceptions to these limits for individual non-employee Directors in extraordinary circumstances, as the Administrator may determine in its discretion, provided that the non-employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving non-employee Directors.

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<sup>1</sup> To be equal to initial Overall Share Limit set forth in Section 11.28(i) less the two million shares subject to the Effective Date Option Awards.

**ARTICLE V.  
STOCK OPTIONS AND STOCK APPRECIATION RIGHTS**

5.1 General. The Administrator may grant Options or Stock Appreciation Rights to Service Providers subject to the limitations in the Plan, including any limitations in the Plan that apply to Incentive Stock Options. The Administrator will determine the number of Shares covered by each Option and Stock Appreciation Right, the exercise price of each Option and Stock Appreciation Right and the conditions and limitations applicable to the exercise of each Option and Stock Appreciation Right. A Stock Appreciation Right will entitle the Participant (or other person entitled to exercise the Stock Appreciation Right) to receive from the Company upon exercise of the exercisable portion of the Stock Appreciation Right an amount determined by multiplying the excess, if any, of the Fair Market Value of one Share on the date of exercise over the exercise price per Share of the Stock Appreciation Right by the number of Shares with respect to which the Stock Appreciation Right is exercised, subject to any limitations of the Plan or that the Administrator may impose and payable in cash, Shares valued at such Fair Market Value or a combination of the two as the Administrator may determine or provide in the Award Agreement.

5.2 Exercise Price. The Administrator will establish each Option's and Stock Appreciation Right's exercise price and specify the exercise price in the Award Agreement. Unless otherwise determined by the Administrator, the exercise price will not be less than 100% of the Fair Market Value on the grant date of the Option or Stock Appreciation Right.

5.3 Duration. Each Option or Stock Appreciation Right will be exercisable at such times and as specified in the Award Agreement, provided that, unless otherwise determined by the Administrator in accordance with Applicable Laws, the term of an Option or Stock Appreciation Right will not exceed ten years. Notwithstanding the foregoing, if the Participant, prior to the end of the term of an Option or Stock Appreciation Right, violates the non-competition, non-solicitation, confidentiality or other similar restrictive covenant provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company or any of its Subsidiaries, the right of the Participant and the Participant's transferees to exercise any Option or Stock Appreciation Right issued to the Participant shall terminate immediately upon such violation unless the Company otherwise determines.

5.4 Exercise. Options and Stock Appreciation Rights may be exercised by delivering to the Company a written notice of exercise, in a form the Administrator approves (which may be electronic), signed by the person authorized to exercise the Option or Stock Appreciation Right, together with, as applicable, payment in full (i) as specified in Section 5.5 for the number of Shares for which the Award is exercised and (ii) as specified in Section 9.5 for any applicable taxes. Unless the Administrator otherwise determines, an Option or Stock Appreciation Right may not be exercised for a fraction of a Share.

5.5 Payment Upon Exercise. Subject to Section 10.8, any Company insider trading policy (including blackout periods) and Applicable Laws, the exercise price of an Option must be paid by:

(a) cash, wire transfer of immediately available funds or by check payable to the order of the Company, provided that the Company may limit the use of one of the foregoing payment forms if one or more of the payment forms below is permitted;

(b) if there is a public market for Shares at the time of exercise, unless the Company otherwise determines, (A) delivery (including telephonically to the extent permitted by the Company) of an irrevocable and unconditional undertaking by a broker acceptable to the Company to deliver promptly to the Company sufficient funds to pay the exercise price, or (B) the Participant's delivery to the Company of a copy of irrevocable and unconditional instructions to a broker acceptable to the Company to deliver promptly to the Company cash or a check sufficient to pay the exercise price; provided that such amount is paid to the Company at such time as may be required by the Administrator;



- (c) to the extent permitted by the Administrator, delivery (either by actual delivery or attestation) of Shares owned by the Participant valued at their Fair Market Value;
- (d) to the extent permitted by the Administrator, surrendering Shares then issuable upon the Option's exercise valued at their Fair Market Value on the exercise date;
- (e) to the extent permitted by the Administrator, delivery of any other property that the Administrator determines is good and valuable consideration; or
- (f) to the extent permitted by the Company, any combination of the above payment forms approved by the Administrator.

## **ARTICLE VI. RESTRICTED STOCK; RESTRICTED STOCK UNITS**

6.1 General. The Administrator may grant Restricted Stock, or the right to purchase Restricted Stock, to any Service Provider, subject to the Company's right to repurchase all or part of such shares at their issue price or other stated or formula price from the Participant (or to require forfeiture of such shares) if conditions the Administrator specifies in the Award Agreement are not satisfied before the end of the applicable restriction period or periods that the Administrator establishes for such Award. In addition, the Administrator may grant to Service Providers Restricted Stock Units, which may be subject to vesting and forfeiture conditions during the applicable restriction period or periods, as set forth in an Award Agreement. The Administrator will determine and set forth in the Award Agreement the terms and conditions for each Restricted Stock and Restricted Stock Unit Award, subject to the conditions and limitations contained in the Plan.

### 6.2 Restricted Stock.

(a) Dividends. Participants holding shares of Restricted Stock will be entitled to all ordinary cash dividends paid with respect to such Shares, unless the Administrator provides otherwise in the Award Agreement. In addition, unless the Administrator provides otherwise, if any dividends or distributions are paid in Shares, or consist of a dividend or distribution to holders of Common Stock of property other than an ordinary cash dividend, the Shares or other property will be subject to the same restrictions on transferability and forfeitability as the shares of Restricted Stock with respect to which they were paid.

(b) Stock Certificates. The Company may require that the Participant deposit in escrow with the Company (or its designee) any stock certificates issued in respect of shares of Restricted Stock, together with a stock power endorsed in blank.

(c) Section 83(b) Election. If a Participant makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which such Participant would otherwise be taxable under Section 83(a) of the Code, such Participant shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service along with proof of the timely filing thereof.

### 6.3 Restricted Stock Units.

(a) Settlement. The Administrator may provide that settlement of Restricted Stock Units will occur upon or as soon as reasonably practicable after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A.

(b) Stockholder Rights. A Participant will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until the Shares are delivered in settlement of the Restricted Stock Unit.

(c) Dividend Equivalents. If the Administrator provides, a grant of Restricted Stock Units may provide a Participant with the right to receive Dividend Equivalents. Dividend Equivalents may be paid currently or credited to an account for the Participant, settled in cash or Shares and subject to the same restrictions on transferability and forfeitability as the Restricted Stock Units with respect to which the Dividend Equivalents are granted and subject to other terms and conditions as set forth in the Award Agreement.

## **ARTICLE VII. OTHER STOCK OR CASH BASED AWARDS**

7.1 Other Stock or Cash Based Awards may be granted to Participants, including Awards entitling Participants to receive Shares to be delivered in the future and including annual or other periodic or long-term cash bonus awards (whether based on specified Performance Criteria or otherwise), in each case subject to any conditions and limitations in the Plan. Such Other Stock or Cash Based Awards will also be available as a payment form in the settlement of other Awards, as standalone payments and as payment in lieu of compensation to which a Participant is otherwise entitled. Other Stock or Cash Based Awards may be paid in Shares, cash or other property, as the Administrator determines. Subject to the provisions of the Plan, the Administrator will determine the terms and conditions of each Other Stock or Cash Based Award, including any purchase price, performance goal (which may be based on the Performance Criteria), transfer restrictions, and vesting conditions, which will be set forth in the applicable Award Agreement.

## **ARTICLE VIII. ADJUSTMENTS FOR CHANGES IN COMMON STOCK AND CERTAIN OTHER EVENTS**

8.1 Equity Restructuring. In connection with any Equity Restructuring, notwithstanding anything to the contrary in this Article VII, the Administrator will equitably adjust each outstanding Award as it deems appropriate to reflect the Equity Restructuring, which may include adjusting the number and type of securities subject to each outstanding Award and/or the Award's exercise price or grant price (if applicable), granting new Awards to Participants, and making a cash payment to Participants. The adjustments provided under this Section 8.1 will be nondiscretionary and final and binding on the affected Participant and the Company; provided that the Administrator will determine whether an adjustment is equitable.

8.2 Corporate Transactions. In the event of any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), reorganization, merger, consolidation, combination, amalgamation, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Common Stock or other securities of the Company, Change in Control, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, other similar corporate transaction or event, other unusual or nonrecurring transaction or event affecting the Company or its financial statements or any change in any Applicable Laws or accounting principles, the Administrator, on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event (except that action to give effect to a change in Applicable Law or accounting principles may be made within a reasonable period of time after such change) and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to (x) prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Award granted or issued under the Plan, (y) to facilitate such transaction or event or (z) give effect to such changes in Applicable Laws or accounting principles:

(a) To provide for the cancellation of any such Award in exchange for either an amount of cash or other property with a value equal to the amount that could have been obtained upon the exercise or settlement of

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the vested portion of such Award or realization of the Participant's rights under the vested portion of such Award, as applicable; provided that, if the amount that could have been obtained upon the exercise or settlement of the vested portion of such Award or realization of the Participant's rights, in any case, is equal to or less than zero, then the Award may be terminated without payment;

(b) To provide that such Award shall vest and, to the extent applicable, be exercisable as to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the provisions of such Award;

(c) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and/or applicable exercise or purchase price, in all cases, as determined by the Administrator;

(d) To make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Awards and/or with respect to which Awards may be granted under the Plan (including, but not limited to, adjustments of the limitations in Article IV hereof on the maximum number and kind of shares which may be issued) and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards;

(e) To replace such Award with other rights or property selected by the Administrator; and/or

(f) To provide that the Award will terminate and cannot vest, be exercised or become payable after the applicable event.

8.3 Administrative Stand Still. In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other extraordinary transaction or change affecting the Shares or the share price of Common Stock, including any Equity Restructuring or any securities offering or other similar transaction, for administrative convenience, the Administrator may refuse to permit the exercise of any Award for up to sixty days before or after such transaction.

8.4 General. Except as expressly provided in the Plan or the Administrator's action under the Plan, no Participant will have any rights due to any subdivision or consolidation of Shares of any class, dividend payment, increase or decrease in the number of Shares of any class or dissolution, liquidation, merger, or consolidation of the Company or other corporation. Except as expressly provided with respect to an Equity Restructuring under Section 8.1 above or the Administrator's action under the Plan, no issuance by the Company of Shares of any class, or securities convertible into Shares of any class, will affect, and no adjustment will be made regarding, the number of Shares subject to an Award or the Award's grant or exercise price. The existence of the Plan, any Award Agreements and the Awards granted hereunder will not affect or restrict in any way the Company's right or power to make or authorize (i) any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, (ii) any merger, consolidation dissolution or liquidation of the Company or sale of Company assets or (iii) any sale or issuance of securities, including securities with rights superior to those of the Shares or securities convertible into or exchangeable for Shares. The Administrator may treat Participants and Awards (or portions thereof) differently under this Article VIII.

## **ARTICLE IX. GENERAL PROVISIONS APPLICABLE TO AWARDS**

9.1 Transferability. Except as the Administrator may determine or provide in an Award Agreement or otherwise for Awards other than Incentive Stock Options, Awards may not be sold, assigned, transferred, pledged or otherwise encumbered, either voluntarily or by operation of law, except by will or the laws of descent and

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distribution, or, subject to the Administrator's consent, pursuant to a domestic relations order, and, during the life of the Participant, will be exercisable only by the Participant. References to a Participant, to the extent relevant in the context, will include references to a Participant's authorized transferee that the Administrator specifically approves.

9.2 Documentation. Each Award will be evidenced in an Award Agreement, which may be written or electronic, as the Administrator determines. Each Award may contain terms and conditions in addition to those set forth in the Plan.

9.3 Discretion. Except as the Plan otherwise provides, each Award may be made alone or in addition or in relation to any other Award. The terms of each Award to a Participant need not be identical, and the Administrator need not treat Participants or Awards (or portions thereof) uniformly.

9.4 Termination of Service; Change in Status. The Administrator will determine, in its sole discretion, the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether a Termination of Service resulted from a discharge for Cause and all questions of whether a particular leave of absence constitutes a Termination of Service or any other change or purported change in a Participant's Service Provider status affects an Award and the extent to which, and the period during which, the Participant, the Participant's legal representative, conservator, guardian or Designated Beneficiary may exercise rights under the Award, if applicable.

9.5 Withholding. Each Participant must pay the Company, or make provision satisfactory to the Administrator for payment of, any taxes required by law to be withheld in connection with such Participant's Awards by the date of the event creating the tax liability. The Company may deduct an amount sufficient to satisfy such tax obligations based on the applicable statutory withholding rates (or such other rate as may be determined by the Company after considering any accounting consequences or costs) from any payment of any kind otherwise due to a Participant. Subject to Section 10.8 and any Company insider trading policy (including blackout periods), Participants may satisfy such tax obligations (i) in cash, by wire transfer of immediately available funds, by check made payable to the order of the Company, provided that the Company may limit the use of one of the foregoing payment forms if one or more of the payment forms below is permitted, (ii) to the extent permitted by the Administrator, in whole or in part by delivery of Shares, including Shares retained from the Award creating the tax obligation, valued at their Fair Market Value, (iii) if there is a public market for Shares at the time the tax obligations are satisfied, unless the Company otherwise determines, (A) delivery (including telephonically to the extent permitted by the Company) of an irrevocable and unconditional undertaking by a broker acceptable to the Company to deliver promptly to the Company sufficient funds to satisfy the tax obligations, or (B) delivery by the Participant to the Company of a copy of irrevocable and unconditional instructions to a broker acceptable to the Company to deliver promptly to the Company cash or a check sufficient to satisfy the tax withholding; provided that such amount is paid to the Company at such time as may be required by the Administrator, or (iv) to the extent permitted by the Company, any combination of the foregoing payment forms approved by the Administrator. If any tax withholding obligation will be satisfied under clause (ii) of the immediately preceding sentence by the Company's retention of Shares from the Award creating the tax obligation and there is a public market for Shares at the time the tax obligation is satisfied, the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on the applicable Participant's behalf some or all of the Shares retained and to remit the proceeds of the sale to the Company or its designee, and each Participant's acceptance of an Award under the Plan will constitute the Participant's authorization to the Company and instruction and authorization to such brokerage firm to complete the transactions described in this sentence.

9.6 Amendment of Award; Repricing. The Administrator may amend, modify or terminate any outstanding Award, including by substituting another Award of the same or a different type, changing the exercise or settlement date, and converting an Incentive Stock Option to a Non-Qualified Stock Option. The Participant's consent to such action will be required unless (i) the action, taking into account any related action,

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does not materially and adversely affect the Participant's rights under the Award, or (ii) the change is permitted under Article VIII or pursuant to Section 10.6.

9.7 Conditions on Delivery of Stock. The Company will not be obligated to deliver any Shares under the Plan or remove restrictions from Shares previously delivered under the Plan until (i) all Award conditions have been met or removed to the Company's satisfaction, (ii) as determined by the Company, all other legal matters regarding the issuance and delivery of such Shares have been satisfied, including any applicable securities laws and stock exchange or stock market rules and regulations, and (iii) the Participant has executed and delivered to the Company such representations or agreements as the Administrator deems necessary or appropriate to satisfy any Applicable Laws. The Company's inability to obtain authority from any regulatory body having jurisdiction, which the Administrator determines is necessary to the lawful issuance and sale of any securities, will relieve the Company of any liability for failing to issue or sell such Shares as to which such requisite authority has not been obtained.

9.8 Acceleration. The Administrator may at any time provide that any Award will become immediately vested and fully or partially exercisable, free of some or all restrictions or conditions, or otherwise fully or partially realizable.

9.9 Additional Terms of Incentive Stock Options. The Administrator may grant Incentive Stock Options only to employees of the Company, any of its present or future parent or subsidiary corporations, as defined in Sections 424(e) or (f) of the Code, respectively, and any other entities the employees of which are eligible to receive Incentive Stock Options under the Code. If an Incentive Stock Option is granted to a Greater Than 10% Stockholder, the exercise price will not be less than 110% of the Fair Market Value on the Option's grant date, and the term of the Option will not exceed five years. All Incentive Stock Options will be subject to and construed consistently with Section 422 of the Code. By accepting an Incentive Stock Option, the Participant agrees if requested by the Company to give prompt notice to the Company of dispositions or other transfers (other than in connection with a Change in Control) of Shares acquired under the Option made within (i) two years from the grant date of the Option or (ii) one year after the transfer of such Shares to the Participant, specifying the date of the disposition or other transfer and the amount the Participant realized, in cash, other property, assumption of indebtedness or other consideration, in such disposition or other transfer. Neither the Company nor the Administrator will be liable to a Participant, or any other party, if an Incentive Stock Option fails or ceases to qualify as an "incentive stock option" under Section 422 of the Code. Any Incentive Stock Option or portion thereof that fails to qualify as an "incentive stock option" under Section 422 of the Code for any reason, including becoming exercisable with respect to Shares having a fair market value exceeding the \$100,000 limitation under Treasury Regulation Section 1.422-4, will be a Non-Qualified Stock Option.

## **ARTICLE X. MISCELLANEOUS**

10.1 No Right to Employment or Other Status. No person will have any claim or right to be granted an Award, and the grant of an Award will not be construed as giving a Participant the right to continued employment or any other relationship with the Company. The Company expressly reserves the right at any time to dismiss or otherwise terminate its relationship with a Participant free from any liability or claim under the Plan or any Award, except as expressly provided in an Award Agreement.

10.2 No Rights as Stockholder; Certificates. Subject to the Award Agreement, no Participant or Designated Beneficiary will have any rights as a stockholder with respect to any Shares to be distributed under an Award until becoming the record holder of such Shares. Notwithstanding any other provision of the Plan, unless the Administrator otherwise determines or Applicable Laws require, the Company will not be required to deliver to any Participant certificates evidencing Shares issued in connection with any Award and instead such Shares may be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

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The Company may place legends on stock certificates issued under the Plan that the Administrator deems necessary or appropriate to comply with Applicable Laws.

10.3 Effective Date and Term of Plan. The Plan will become effective on the Effective Date and, unless earlier terminated by the Board, will remain in effect until the earlier of (i) the earliest date as of which all Awards granted under the Plan have been satisfied in full or terminated and no Shares approved for issuance under the Plan remain available to be granted under new Awards or (ii) the tenth anniversary of [ ]<sup>2</sup>, but Awards previously granted may extend beyond that date in accordance with the Plan. If the Plan is not approved by the Company's stockholders, the Plan will not become effective and no Awards will be granted under the Plan.

10.4 Amendment of Plan. The Administrator may amend, suspend or terminate the Plan at any time; provided that no amendment, other than an increase to the Overall Share Limit, may materially and adversely affect any Award outstanding at the time of such amendment without the affected Participant's consent. No Awards may be granted under the Plan during any suspension period or after Plan termination. Awards outstanding at the time of any Plan suspension or termination will continue to be governed by the Plan and the Award Agreement, as in effect before such suspension or termination. The Board will obtain stockholder approval of any Plan amendment to the extent necessary to comply with Applicable Laws.

10.5 Provisions for Foreign Participants. The Administrator may modify Awards granted to Participants who are foreign nationals or employed outside the United States or establish subplans or procedures under the Plan to address differences in laws, rules, regulations or customs of such foreign jurisdictions with respect to tax, securities, currency, employee benefit or other matters.

### 10.6 Section 409A.

(a) General. The Company intends that all Awards be structured to comply with, or be exempt from, Section 409A, such that no adverse tax consequences, interest, or penalties under Section 409A apply. Notwithstanding anything in the Plan or any Award Agreement to the contrary, the Administrator may, without a Participant's consent, amend this Plan or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and retroactive actions) as are necessary or appropriate to preserve the intended tax treatment of Awards, including any such actions intended to (A) exempt this Plan or any Award from Section 409A, or (B) comply with Section 409A, including regulations, guidance, compliance programs and other interpretative authority that may be issued after an Award's grant date. The Company makes no representations or warranties as to an Award's tax treatment under Section 409A or otherwise. The Company will have no obligation under this Section 10.6 or otherwise to avoid the taxes, penalties or interest under Section 409A with respect to any Award and will have no liability to any Participant or any other person if any Award, compensation or other benefits under the Plan are determined to constitute noncompliant "nonqualified deferred compensation" subject to taxes, penalties or interest under Section 409A.

(b) Separation from Service. If an Award constitutes "nonqualified deferred compensation" under Section 409A, any payment or settlement of such Award upon a termination of a Participant's Service Provider relationship will, to the extent necessary to avoid taxes under Section 409A, be made only upon the Participant's "separation from service" (within the meaning of Section 409A), whether such "separation from service" occurs upon or after the Termination of Service of a Participant. For purposes of this Plan or any Award Agreement relating to any such payments or benefits, references to a "termination," "termination of employment," Termination of Service or like terms means a "separation from service."

(c) Payments to Specified Employees. Notwithstanding any contrary provision in the Plan or any Award Agreement, any payment(s) of "nonqualified deferred compensation" required to be made under an

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<sup>2</sup> Note to Draft: To reflect the 10-year anniversary of the date the Board adopted the Plan.

Award to a “specified employee” (as defined under Section 409A and as the Administrator determines) due to his or her “separation from service” will, to the extent necessary to avoid taxes under Section 409A(a)(2)(B)(i) of the Code, be delayed for the six-month period immediately following such “separation from service” (or, if earlier, until the specified employee’s death) and will instead be paid (as set forth in the Award Agreement) on the day immediately following such six-month period or as soon as administratively practicable thereafter (without interest). Any payments of “nonqualified deferred compensation” under such Award payable more than six months following the Participant’s “separation from service” will be paid at the time or times the payments are otherwise scheduled to be made.

10.7 Limitations on Liability. Notwithstanding any other provisions of the Plan, no individual acting as a director, officer, other employee or agent of the Company or any Subsidiary will be liable to any Participant, former Participant, spouse, beneficiary, or any other person for any claim, loss, liability, or expense incurred in connection with the Plan or any Award, and such individual will not be personally liable with respect to the Plan because of any contract or other instrument executed in his or her capacity as an Administrator, director, officer, other employee or agent of the Company or any Subsidiary. The Company will indemnify and hold harmless each director, officer, other employee and agent of the Company or any Subsidiary that has been or will be granted or delegated any duty or power relating to the Plan’s administration or interpretation, against any cost or expense (including attorneys’ fees) or liability (including any sum paid in settlement of a claim with the Administrator’s approval) arising from any act or omission concerning this Plan unless arising from such person’s own fraud or bad faith.

10.8 Lock-Up Period. The Company may, at the request of any underwriter representative or otherwise, in connection with registering the offering of any Company securities under the Securities Act, prohibit Participants from, directly or indirectly, selling or otherwise transferring any Shares or other Company securities during a period of up to one hundred eighty days following the effective date of a Company registration statement filed under the Securities Act, or such longer period as determined by the underwriter.

10.9 Data Privacy. As a condition for receiving any Award, each Participant explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this section by and among the Company and its Subsidiaries and affiliates exclusively for implementing, administering and managing the Participant’s participation in the Plan. The Company and its Subsidiaries and affiliates may hold certain personal information about a Participant, including the Participant’s name, address and telephone number; birthdate; social security, insurance number or other identification number; salary; nationality; job title(s); any Shares held in the Company or its Subsidiaries and affiliates; and Award details, to implement, manage and administer the Plan and Awards (the “Data”). The Company and its Subsidiaries and affiliates may transfer the Data amongst themselves as necessary to implement, administer and manage a Participant’s participation in the Plan, and the Company and its Subsidiaries and affiliates may transfer the Data to third parties assisting the Company with Plan implementation, administration and management. These recipients may be located in the Participant’s country, or elsewhere, and the Participant’s country may have different data privacy laws and protections than the recipients’ country. By accepting an Award, each Participant authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, to implement, administer and manage the Participant’s participation in the Plan, including any required Data transfer to a broker or other third party with whom the Company or the Participant may elect to deposit any Shares. The Data related to a Participant will be held only as long as necessary to implement, administer, and manage the Participant’s participation in the Plan. A Participant may, at any time, view the Data that the Company holds regarding such Participant, request additional information about the storage and processing of the Data regarding such Participant, recommend any necessary corrections to the Data regarding the Participant or refuse or withdraw the consents in this Section 10.9 in writing, without cost, by contacting the local human resources representative. The Company may cancel Participant’s ability to participate in the Plan and, in the Administrator’s discretion, the Participant may forfeit any outstanding Awards if the Participant refuses or withdraws the consents in this Section 10.9. For more information on the consequences of refusing or withdrawing consent, Participants may contact their local human resources representative.

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10.10 Severability. If any portion of the Plan or any action taken under it is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan, and the Plan will be construed and enforced as if the illegal or invalid provisions had been excluded, and the illegal or invalid action will be null and void.

10.11 Governing Documents. If any contradiction occurs between the Plan and any Award Agreement or other written agreement between a Participant and the Company (or any Subsidiary) that the Administrator has approved, the Plan will govern, unless it is expressly specified in such Award Agreement or other written document that a specific provision of the Plan will not apply.

10.12 Governing Law. The Plan and all Awards will be governed by and interpreted in accordance with the laws of the State of Delaware, disregarding any state's choice-of-law principles requiring the application of a jurisdiction's laws other than the State of Delaware.

10.13 Claw-back Provisions. All Awards (including any proceeds, gains or other economic benefit the Participant actually or constructively receives upon receipt or exercise of any Award or the receipt or resale of any Shares underlying the Award) will be subject to any Company claw-back policy, including any claw-back policy adopted to comply with Applicable Laws (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder) as set forth in such claw-back policy or the Award Agreement.

10.14 Titles and Headings. The titles and headings in the Plan are for convenience of reference only and, if any conflict, the Plan's text, rather than such titles or headings, will control.

10.15 Conformity to Securities Laws. Participant acknowledges that the Plan is intended to conform to the extent necessary with Applicable Laws. Notwithstanding anything herein to the contrary, the Plan and all Awards will be administered only in conformance with Applicable Laws. To the extent Applicable Laws permit, the Plan and all Award Agreements will be deemed amended as necessary to conform to Applicable Laws.

10.16 Relationship to Other Benefits. No payment under the Plan will be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Subsidiary except as expressly provided in writing in such other plan or an agreement thereunder.

10.17 Broker-Assisted Sales. In the event of a broker-assisted sale of Shares in connection with the payment of amounts owed by a Participant under or with respect to the Plan or Awards, including amounts to be paid under the final sentence of Section 9.5: (a) any Shares to be sold through the broker-assisted sale will be sold on the day the payment first becomes due, or as soon thereafter as practicable; (b) such Shares may be sold as part of a block trade with other Participants in the Plan in which all participants receive an average price; (c) the applicable Participant will be responsible for all broker's fees and other costs of sale, and by accepting an Award, each Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the Company or its designee receives proceeds of such sale that exceed the amount owed, the Company will pay such excess in cash to the applicable Participant as soon as reasonably practicable; (e) the Company and its designees are under no obligation to arrange for such sale at any particular price; and (f) in the event the proceeds of such sale are insufficient to satisfy the Participant's applicable obligation, the Participant may be required to pay immediately upon demand to the Company or its designee an amount in cash sufficient to satisfy any remaining portion of the Participant's obligation.



## ARTICLE XI. DEFINITIONS

As used in the Plan, the following words and phrases will have the following meanings:

11.1 “**Administrator**” means the Board or a Committee to the extent that the Board’s powers or authority under the Plan have been delegated to such Committee.

11.2 “**Applicable Laws**” means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where Awards are granted.

11.3 “**Award**” means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units or Other Stock or Cash Based Awards.

11.4 “**Award Agreement**” means a written agreement evidencing an Award, which may be electronic, that contains such terms and conditions as the Administrator determines, consistent with and subject to the terms and conditions of the Plan.

11.5 “**Board**” means the Board of Directors of the Company.

11.6 “**Cause**” means (i) if a Participant is a party to a written employment, severance or consulting agreement with the Company or any of its Subsidiaries or an Award Agreement in which the term “cause” is defined (a “**Relevant Agreement**”), “Cause” as defined in the Relevant Agreement, and (ii) if no Relevant Agreement exists, (A) a material failure by the Participant to perform the Participant’s responsibilities or duties to the Company or any of its Subsidiaries under any agreement with the Company or any of its Subsidiaries or those other responsibilities or duties as reasonably requested from time to time by the Board, after written demand for performance has been given by the Board that identifies how the Participant has not performed his or her responsibilities or duties and such failure, if susceptible of cure, has not been cured for a period of thirty (30) days after the Participant receives notice from the Board; (B) the Participant’s engagement in illegal conduct or gross misconduct that the Company in good faith believes has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company or any of its Subsidiaries; (C) the Participant’s commission or conviction of, or plea of guilty or nolo contendere to, a felony, a crime involving moral turpitude or any other act or omission that the Company in good faith believes has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company or any of its Subsidiaries; (D) a material breach of the Participant’s duty of loyalty to the Company or any of its Subsidiaries or the Participant’s material breach of the Company’s or any of its Subsidiaries’ written code of conduct and business ethics, in either case, that the Company in good faith believes has materially harmed or is reasonably likely to materially harm the standing and reputation of the Company or any of its Subsidiaries or the Participant’s breach of any of the provision of this Agreement, or the Participant’s material breach of any other material written agreement between the Participant and the Company or any of its Subsidiaries; (E) dishonesty that the Company in good faith believes has materially harmed or is reasonably likely to materially harm the Company or any of its Subsidiaries; (F) fraud, gross negligence or repetitive negligence committed without regard to corrective direction in the course of discharge of the Participant’s duties; or (G) excessive and unreasonable absences from your duties for any reason or as a result of the Participant’s Disability (other than authorized leave).

11.7 “**Change in Control**” means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of Common Stock to the general public through a registration statement filed with the Securities and Exchange Commission or a transaction or series of transactions that meets the requirements of clauses (i) and (ii) of subsection (c) below) whereby any “person” or related “group” of “persons” (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange

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Act) (other than the Company, any of its Subsidiaries, an employee benefit plan maintained by the Company or any of its Subsidiaries or a “person” that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50 % of the total combined voting power of the Company’s securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new Director(s) (other than a Director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in subsections (a) or (c) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the Directors then still in office who either were Directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company’s assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) which results in the Company’s voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company’s assets or otherwise succeeds to the business of the Company (the Company or such person, the “**Successor Entity**”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction, and

(ii) after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this clause (ii) as beneficially owning 50% or more of the combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or portion of any Award) that provides for the deferral of compensation that is subject to Section 409A, to the extent required to avoid the imposition of additional taxes under Section 409A, the transaction or event described in subsection (a), (b) or (c) with respect to such Award (or portion thereof) shall only constitute a Change in Control for purposes of the payment timing of such Award if such transaction also constitutes a “change in control event,” as defined in Treasury Regulation Section 1.409A-3(i)(5).

The Administrator shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Change in Control is a “change in control event” as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation.

11.8 “**Code**” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

11.9 “**Committee**” means one or more committees or subcommittees of the Board, which may include one or more Company directors or executive officers, to the extent Applicable Laws permit. To the extent required to

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comply with the provisions of Rule 16b-3, it is intended that each member of the Committee will be, at the time the Committee takes any action with respect to an Award that is subject to Rule 16b-3, a “non-employee director” within the meaning of Rule 16b-3; however, a Committee member’s failure to qualify as a “non-employee director” within the meaning of Rule 16b-3 will not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan.

11.10 “**Common Stock**” means the Class A common stock of the Company.

11.11 “**Company**” means Vivid Seats Inc., a Delaware corporation, or any successor.

11.12 “**Consultant**” means any person, including any adviser, engaged by the Company or its parent or Subsidiary to render services to such entity if the consultant or adviser: (i) renders bona fide services to the Company; (ii) renders services not in connection with the offer or sale of securities in a capital-raising transaction and does not directly or indirectly promote or maintain a market for the Company’s securities; and (iii) is a natural person.

11.13 “**Designated Beneficiary**” means the beneficiary or beneficiaries the Participant designates, in a manner the Administrator determines, to receive amounts due or exercise the Participant’s rights if the Participant dies or becomes incapacitated. Without a Participant’s effective designation, “Designated Beneficiary” will mean the Participant’s estate.

11.14 “**Director**” means a Board member.

11.15 “**Disability**” means Employee’s inability to perform the essential functions of his job, with or without accommodation, as a result of any mental or physical disability or incapacity for an extended period but not less than sixty (60) business days in any consecutive 6 month period, as determined in the sole discretion of Board.

11.16 “**Dividend Equivalents**” means a right granted to a Participant under the Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

11.17 “**Effective Date**” means the date on which the transactions contemplated by that certain Transaction Agreement, by and among Horizon Acquisition Corporation, Horizon Sponsor, LLC, Hoya Topco, LLC, Hoya Intermediate, LLC, Vivid Seats Inc., dated as of [ ], 2021 as amended from time to time, are consummated, *provided* that the Board has adopted the Plan prior to or on such date, subject to approval of the Plan by the Company’s stockholders.

11.18 “**Effective Date Option Awards**” means Non-Qualified Options to purchase two million Shares to be granted to Participants on or about the Effective Date, pursuant to which the exercise price with respect to one million of such Shares is expected to have an exercise price of \$10.00 per Share and the exercise price with respect to one million of such Shares is expected to have an exercise price of \$15.00 per Share.

11.19 “**Employee**” means any employee of the Company or its Subsidiaries.

11.20 “**Equity Restructuring**” means a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of Shares (or other Company securities) or the share price of Common Stock (or other Company securities) and causes a change in the per share value of the Common Stock underlying outstanding Awards.

11.21 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

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11.22 “**Exchange Program**” shall mean a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have higher or lower exercise prices and different terms), Awards of a different type, and/or cash, (ii) Holders would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

11.23 “**Fair Market Value**” means, as of any date, the value of Common Stock determined as follows: (i) if the Common Stock is listed on any established stock exchange, its Fair Market Value will be the closing sales price for such Common Stock as quoted on such exchange for such date, or if no sale occurred on such date, the last day preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable; (ii) if the Common Stock is not traded on a stock exchange but is quoted on a national market or other quotation system, the closing sales price on such date, or if no sales occurred on such date, then on the last date preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable; or (iii) in any case the Administrator may determine the Fair Market Value in its discretion.

11.24 “**Greater Than 10% Stockholder**” means an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or its parent or subsidiary corporation, as defined in Section 424(e) and (f) of the Code, respectively.

11.25 “**Incentive Stock Option**” means an Option intended to qualify as an “incentive stock option” as defined in Section 422 of the Code.

11.26 “**Non-Qualified Stock Option**” means an Option not intended or not qualifying as an Incentive Stock Option.

11.27 “**Option**” means an option to purchase Shares.

11.28 “**Other Stock or Cash Based Awards**” means cash awards, awards of Shares, and other awards valued wholly or partially by referring to, or are otherwise based on, Shares or other property.

11.29 “**Overall Share Limit**” means the sum of (i) [●]<sup>3</sup> Shares; and (ii) an annual increase on the first day of each calendar year beginning January 1, 2022 and ending on and including January 1, 2031, equal to the lesser of (A) 2% of the aggregate number of shares of Common Stock outstanding on the final day of the immediately preceding calendar year and (B) such smaller number of Shares as is determined by the Board.

11.30 “**Participant**” means a Service Provider who has been granted an Award.

11.31 “**Performance Criteria**” mean the criteria (and adjustments) that the Administrator may select for an Award to establish performance goals for a performance period, which may include the following: net earnings or losses (either before or after one or more of interest, taxes, depreciation, amortization, and non-cash equity-based compensation expense); gross or net sales or revenue or sales or revenue growth; net income (either before or after taxes) or adjusted net income; profits (including but not limited to gross profits, net profits, profit growth, net operation profit or economic profit), profit return ratios or operating margin; budget or operating earnings (either before or after taxes or before or after allocation of corporate overhead and bonus); cash flow (including operating cash flow and free cash flow or cash flow return on capital); return on assets; return on

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<sup>3</sup> To be the sum of (a) 5% of the fully diluted Shares at closing plus (b) two million Shares to be granted to Participants on or about the Effective Date, pursuant to which the exercise price with respect to one million of such Shares is expected to have an exercise price of \$10.00 per Share and the exercise price with respect to one million of such Shares is expected to have an exercise price of \$15.00 per Share.

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capital or invested capital; cost of capital; return on stockholders' equity; total stockholder return; return on sales; costs, reductions in costs and cost control measures; expenses; working capital; earnings or loss per share; adjusted earnings or loss per share; price per share or dividends per share (or appreciation in or maintenance of such price or dividends); regulatory achievements or compliance; implementation, completion or attainment of objectives relating to research, development, regulatory, commercial, or strategic milestones or developments; market share; economic value or economic value added models; division, group or corporate financial goals; customer satisfaction/growth; customer service; employee satisfaction; recruitment and maintenance of personnel; human resources management; supervision of litigation and other legal matters; strategic partnerships and transactions; financial ratios (including those measuring liquidity, activity, profitability or leverage); debt levels or reductions; sales-related goals; financing and other capital raising transactions; cash on hand; acquisition activity; investment sourcing activity; marketing initiatives; and other measures of performance selected by the Board or Committee whether or not listed herein, any of which may be measured in absolute terms or as compared to any incremental increase or decrease. Such performance goals also may be based solely by reference to the Company's performance or the performance of a Subsidiary, division, business segment or business unit of the Company or a Subsidiary, or based upon performance relative to performance of other companies or upon comparisons of any of the indicators of performance relative to performance of other companies. The Committee may provide for exclusion of the impact of an event or occurrence which the Committee determines should appropriately be excluded, including (a) restructurings, discontinued operations, extraordinary items, and other unusual, infrequently occurring or non-recurring charges or events, (b) asset write-downs, (c) litigation or claim judgments or settlements, (d) acquisitions or divestitures, (e) reorganization or change in the corporate structure or capital structure of the Company, (f) an event either not directly related to the operations of the Company, Subsidiary, division, business segment or business unit or not within the reasonable control of management, (g) foreign exchange gains and losses, (h) a change in the fiscal year of the Company, (i) the refinancing or repurchase of bank loans or debt securities, (j) unbudgeted capital expenditures, (k) the issuance or repurchase of equity securities and other changes in the number of outstanding shares, (l) conversion of some or all of convertible securities to Common Stock, (m) any business interruption event (n) the cumulative effects of tax or accounting changes in accordance with U.S. generally accepted accounting principles, or (o) the effect of changes in other laws or regulatory rules affecting reported results.

11.32 "**Plan**" means this 2021 Incentive Award Plan.

11.33 "**Restricted Stock**" means Shares awarded to a Participant under Article VI subject to certain vesting conditions and other restrictions.

11.34 "**Restricted Stock Unit**" means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Administrator to be of equal value as of such settlement date, subject to certain vesting conditions and other restrictions.

11.35 "**Rule 16b-3**" means Rule 16b-3 promulgated under the Exchange Act.

11.36 "**Section 409A**" means Section 409A of the Code and all regulations, guidance, compliance programs and other interpretative authority thereunder.

11.37 "**Securities Act**" means the Securities Act of 1933, as amended.

11.38 "**Service Provider**" means an Employee, Consultant or Director.

11.39 "**Shares**" means shares of Common Stock.

11.40 "**Stock Appreciation Right**" means a stock appreciation right granted under Article V.

11.41 "**Subsidiary**" means any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the

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unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least 50% of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

11.42 “***Substitute Awards***” shall mean Awards granted or Shares issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, in each case by a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines.

11.43 “***Termination of Service***” means the date the Participant ceases to be a Service Provider.

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Annex G-17

<p style="text-align: center;"><b>VIVID SEATS INC.</b> <b>2021 EMPLOYEE STOCK PURCHASE PLAN</b></p>
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**ARTICLE I.**  
**PURPOSE**

The purpose of this Plan is to assist Eligible Employees of the Company and its Designated Subsidiaries in acquiring a stock ownership interest in the Company.

The Plan consists of two components: (i) the Section 423 Component and (ii) the Non-Section 423 Component. The Section 423 Component is intended to qualify as an “employee stock purchase plan” under Section 423 of the Code and shall be administered, interpreted and construed in a manner consistent with the requirements of Section 423 of the Code. The Non-Section 423 Component authorizes the grant of rights which need not qualify as rights granted pursuant to an “employee stock purchase plan” under Section 423 of the Code. Rights granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and Designated Subsidiaries but shall not be intended to qualify as an “employee stock purchase plan” under Section 423 of the Code. Except as otherwise determined by the Administrator or provided herein, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of this Plan, the Administrator may designate separate Offerings under the Plan in which Eligible Employees will participate. The terms of these Offerings need not be identical, even if the dates of the applicable Offering Period(s) in each such Offering are identical, provided that the terms of participation are the same within each separate Offering under the Section 423 Component (as determined under Section 423 of the Code). Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

**ARTICLE II.**  
**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise.

2.1 “**Administrator**” means the entity that conducts the general administration of the Plan as provided in Article XI.

2.2 “**Agent**” means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or an Employee with regard to the Plan.

2.3 “**Applicable Law**” means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which Shares are listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where rights under this Plan are granted.

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2.4 “**Board**” means the Board of Directors of the Company.

2.5 “**Code**” means the U.S. Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

2.6 “**Common Stock**” means common stock of the Company and such other securities of the Company that may be substituted therefore.

2.7 “**Company**” means Vivid Seats Inc., a Delaware corporation, or any successor.

2.8 “**Compensation**” of an Eligible Employee means, unless otherwise determined by the Administrator, the gross base compensation or wages received by such Eligible Employee as compensation for services to the Company or any Designated Subsidiary, excluding overtime payments, sales commissions, incentive compensation, bonuses, expense reimbursements, income received in connection with any compensatory equity awards, fringe benefits and other special payments.

2.9 “**Designated Subsidiary**” means any Subsidiary designated by the Administrator in accordance with Section 11.2(b), such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component. A Designated Subsidiary may participate in either the Section 423 Component or Non-Section 423 Component, but not both; provided that a Subsidiary that, for U.S. tax purposes, is disregarded from the Company or any Subsidiary that participates in the Section 423 Component shall automatically constitute a Designated Subsidiary that participates in the Section 423 Component.

2.10 “**Effective Date**” means the date on which the transactions contemplated by that certain Transaction Agreement, by and among Horizon Acquisition Corporation, Horizon Sponsor, LLC, Hoya Topco, LLC, Hoya Intermediate, LLC, Vivid Seats Inc., dated as of [ ], 2021 as amended from time to time, are consummated, *provided* that the Board has adopted the Plan prior to or on such date, subject to approval of the Plan by the Company’s stockholders.

2.11 “**Eligible Employee**” means:

(a) an Employee who does not, immediately after any rights under this Plan are granted, own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Shares and other securities of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing, the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock that an Employee may purchase under outstanding options shall be treated as stock owned by the Employee.

(b) Notwithstanding the foregoing, the Administrator may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering Period under the Section 423 Component if: (i) such Employee is a highly compensated employee within the meaning of Section 423(b)(4)(D) of the Code; (ii) such Employee has not met a service requirement designated by the Administrator pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two years); (iii) such Employee’s customary employment is for twenty hours per week or less; (iv) such Employee’s customary employment is for less than five months in any calendar year; and/or (v) such Employee is a citizen or resident of a foreign jurisdiction and the grant of a right to purchase Shares under the Plan to such Employee would be prohibited under the laws of such foreign jurisdiction or the grant of a right to purchase Shares under the Plan to such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan to violate the requirements of Section 423 of the Code, as determined by the Administrator in its sole discretion; provided, further, that any exclusion in clauses (i), (ii), (iii), (iv) or (v) shall be applied in an identical manner under each Offering Period to all Employees, in accordance with Treasury Regulation Section 1.423-2(e).



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(c) Further notwithstanding the foregoing, with respect to the Non-Section 423 Component, the first sentence in this definition shall apply in determining who is an “Eligible Employee,” except (i) the Administrator may limit eligibility further within the Company or a Designated Subsidiary so as to only designate some Employees of the Company or a Designated Subsidiary as Eligible Employees, and (ii) to the extent the restrictions in the first sentence in this definition are not consistent with applicable local laws, the applicable local laws shall control.

2.12 “**Employee**” means any individual who renders services to the Company or any Designated Subsidiary in the status of an employee, and, with respect to the Section 423 Component, a person who is an employee within the meaning of Section 3401(c) of the Code. For purposes of an individual’s participation in, or other rights under the Plan, all determinations by the Company shall be final, binding and conclusive, notwithstanding that any court of law or governmental agency subsequently makes a contrary determination. For purposes of the 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 Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three (3) months and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three (3)-month period.

2.13 “**Enrollment Date**” means the first Trading Day of each Offering Period.

2.14 “**Fair Market Value**” means, as of any date, the value of Shares determined as follows: (i) if the Shares are listed on any established stock exchange, its Fair Market Value will be the closing sales price for such Shares as quoted on such exchange for such date, or if no sale occurred on such date, the last day preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable; (ii) if the Shares are not traded on a stock exchange but are quoted on a national market or other quotation system, the closing sales price on such date, or if no sales occurred on such date, then on the last date preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable; or (iii) without an established market for the Shares, the Administrator will determine the Fair Market Value in its discretion.

2.15 “**Non-Section 423 Component**” means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that need not satisfy the requirements for rights to purchase Shares granted pursuant to an “employee stock purchase plan” that are set forth under Section 423 of the Code.

2.16 “**Offering**” means an offer under the Plan of a right to purchase Shares that may be exercised during an Offering Period as further described in Article IV hereof. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees of the Company or a Designated Subsidiary shall be deemed a separate Offering, even if the dates and other terms of the applicable Offering Periods of each such Offering are identical, and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treas. Reg. § 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering thereunder together satisfy Treas. Reg. § 1.423-2(a)(2) and (a)(3).

2.17 “**Offering Document**” has the meaning given to such term in Section 4.1.

2.18 “**Offering Period**” has the meaning given to such term in Section 4.1.

2.19 “**Parent**” means any corporation, other than the Company, in an unbroken chain of corporations ending with the Company if, at the time of the determination, each of the corporations other than the Company

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owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.20 “**Participant**” means any Eligible Employee who has executed a subscription agreement and been granted rights to purchase Shares pursuant to the Plan.

2.21 “**Payday**” means the regular and recurring established day for payment of Compensation to an Employee of the Company or any Designated Subsidiary.

2.22 “**Plan**” means this 2021 Employee Stock Purchase Plan, including both the Section 423 Component and Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.23 “**Purchase Date**” means the last Trading Day of each Purchase Period or such other date as determined by the Administrator and set forth in the Offering Document.

2.24 “**Purchase Period**” shall refer to one or more periods within an Offering Period, as designated in the applicable Offering Document; provided, however, that, in the event no purchase period is designated by the Administrator in the applicable Offering Document, the purchase period for each Offering Period covered by such Offering Document shall be the same as the applicable Offering Period.

2.25 “**Purchase Price**” means the purchase price designated by the Administrator in the applicable Offering Document (which purchase price, for purposes of the Section 423 Component, shall not be less than 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower); provided, however, that, in the event no purchase price is designated by the Administrator in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document shall be 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower; provided, further, that the Purchase Price may be adjusted by the Administrator pursuant to Article VIII and shall not be less than the par value of a Share.

2.26 “**Section 423 Component**” means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that are intended to satisfy the requirements for rights to purchase Shares granted pursuant to an “employee stock purchase plan” that are set forth under Section 423 of the Code.

2.27 “**Securities Act**” means the U.S. Securities Act of 1933, as amended.

2.28 “**Share**” means a share of Common Stock.

2.29 “**Subsidiary**” means any corporation, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain; provided, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent either (a) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of the Company or any other Subsidiary that is a corporation being the sole owner of such entity, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary. In addition, with respect to the Non-Section 423 Component, Subsidiary shall include any corporate or non-corporate entity in which the Company has a direct or indirect equity interest or significant business relationship.

2.30 “**Trading Day**” means a day on which national stock exchanges in the United States are open for trading.

2.31 “**Treas. Reg.**” means U.S. Department of the Treasury regulations.

### ARTICLE III. SHARES SUBJECT TO THE PLAN

3.1 Number of Shares. Subject to Article VIII, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be [●]<sup>1</sup> Shares. In addition to the foregoing, subject to Article VIII, on the first day of each calendar year beginning on January 1, 2022 and ending on and including January 1, 2031, the number of Shares available for issuance under the Plan shall be increased by that number of Shares equal to the lesser of (a) 0.5% of the aggregate number of shares of Common Stock of the Company outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as determined by the Board. If any right granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such right shall again become available for issuance under the Plan. Notwithstanding anything in this Section 3.1 to the contrary, the number of Shares that may be issued or transferred pursuant to the rights granted under the Section 423 Component of the Plan shall not exceed an aggregate of [●]<sup>2</sup> Shares, subject to Article VIII.

3.2 Shares Distributed. Any Shares distributed pursuant to the Plan may consist, in whole or in part, of authorized and unissued Shares, treasury shares or Shares purchased on the open market.

### ARTICLE IV. OFFERING PERIODS; OFFERING DOCUMENTS; PURCHASE DATES

4.1 Offering Periods. The Administrator may from time to time grant or provide for the grant of rights to purchase Shares under the Plan to Eligible Employees during one or more periods (each, an “**Offering Period**”) selected by the Administrator. The terms and conditions applicable to each Offering Period shall be set forth in an “**Offering Document**” adopted by the Administrator, which Offering Document shall be in such form and shall contain such terms and conditions as the Administrator shall deem appropriate and shall be incorporated by reference into and made part of the Plan and shall be attached hereto as part of the Plan. The provisions of separate Offerings or Offering Periods under the Plan need not be identical.

4.2 Offering Documents. Each Offering Document with respect to an Offering Period shall specify (through incorporation of the provisions of this Plan by reference or otherwise):

(a) the length of the Offering Period, which period shall not exceed twenty-seven months;

(b) the maximum number of Shares that may be purchased by any Eligible Employee during such Offering Period, which, in the absence of a contrary designation by the Administrator, shall be [ ]<sup>3</sup> Shares; and

(c) such other provisions as the Administrator determines are appropriate, subject to the Plan.

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<sup>1</sup> Note to Draft: To be 1% of the fully diluted Common Stock at closing.

<sup>2</sup> Note to Draft: Maximum number of Shares granted under the Section 423 Component of the Plan to be confirmed.

<sup>3</sup> Note to Draft: Maximum number of Shares that may be purchased by any Eligible Employee during an Offering Period to be confirmed.

**ARTICLE V.  
ELIGIBILITY AND PARTICIPATION**

5.1 Eligibility. Any Eligible Employee who shall be employed by the Company or a Designated Subsidiary on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of this Article V and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

5.2 Enrollment in Plan.

(a) Except as otherwise set forth in an Offering Document or determined by the Administrator, an Eligible Employee may become a Participant in the Plan for an Offering Period by delivering a subscription agreement to the Company by such time prior to the Enrollment Date for such Offering Period (or such other date specified in the Offering Document) designated by the Administrator and in such form as the Company provides.

(b) Each subscription agreement shall designate either (i) a whole percentage of such Eligible Employee's Compensation (ii) or a fixed dollar amount, in either case, to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each Payday during the Offering Period as payroll deductions under the Plan. In either event, the designated percentage or fixed dollar amount may not be less than 1% and may not be more than the maximum percentage specified by the Administrator in the applicable Offering Document (which percentage shall be 20% in the absence of any such designation) as payroll deductions. The payroll deductions made for each Participant shall be credited to an account for such Participant under the Plan and shall be deposited with the general funds of the Company.

(c) A Participant may increase or decrease the percentage of Compensation or the fixed dollar amount designated in his or her subscription agreement, subject to the limits of this Section 5.2, or may suspend his or her payroll deductions, at any time during an Offering Period; provided, however, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections during each Offering Period in the applicable Offering Document (and in the absence of any specific designation by the Administrator, a Participant shall be allowed to decrease (but not increase) his or her payroll deduction elections one time during each Offering Period). Any such change or suspension of payroll deductions shall be effective with the first full payroll period following ten business days after the Company's receipt of the new subscription agreement (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). In the event a Participant suspends his or her payroll deductions, such Participant's cumulative payroll deductions prior to the suspension shall remain in his or her account and shall be applied to the purchase of Shares on the next occurring Purchase Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Article VII.

(d) Except as otherwise set forth in an Offering Document or determined by the Administrator, a Participant may participate in the Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period.

5.3 Payroll Deductions. Except as otherwise provided in the applicable Offering Document, payroll deductions for a Participant shall commence on the first Payday following the Enrollment Date and shall end on the last Payday in the Offering Period to which the Participant's authorization is applicable, unless sooner terminated by the Participant as provided in Article VII or suspended by the Participant or the Administrator as provided in Section 5.2 and Section 5.6, respectively. Notwithstanding any other provisions of the Plan to the contrary, in non-U.S. jurisdictions where participation in the Plan through payroll deductions is prohibited, the Administrator may provide that an Eligible Employee may elect to participate through contributions to the Participant's account under the Plan in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; provided, however, that, for any Offering under the Section 423 Component, the Administrator shall take into consideration any limitations under Section 423 of the Code when applying an alternative method of contribution.

5.4 Effect of Enrollment. A Participant's completion of a subscription agreement will enroll such Participant in the Plan for each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under the Plan as provided in Article VII or otherwise becomes ineligible to participate in the Plan.

5.5 Limitation on Purchase of Shares. An Eligible Employee may be granted rights under the Section 423 Component only if such rights, together with any other rights granted to such Eligible Employee under "employee stock purchase plans" of the Company, any Parent or any Subsidiary, as specified by Section 423(b)(8) of the Code, do not permit such employee's rights to purchase stock of the Company or any Parent or Subsidiary to accrue at a rate that exceeds \$25,000 of the fair market value of such stock (determined as of the first day of the Offering Period during which such rights are granted) for each calendar year in which such rights are outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code.

5.6 Suspension of Payroll Deductions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 5.5 (with respect to the Section 423 Component) or the other limitations set forth in this Plan, a Participant's payroll deductions may be suspended by the Administrator at any time during an Offering Period. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares by reason of Section 423(b)(8) of the Code, Section 5.5 or the other limitations set forth in this Plan shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

5.7 Foreign Employees. In order to facilitate participation in the Plan, the Administrator may provide for such special terms applicable to Participants who are citizens or residents a foreign jurisdiction, or who are employed by a Designated Subsidiary outside of the United States, as the Administrator may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Except as permitted by Section 423 of the Code, with respect to the Section 423 Component, such special terms may not be more favorable than the terms of rights granted under the Section 423 Component to Eligible Employees who are residents of the United States. Such special terms may be set forth in an addendum to the Plan in the form of an appendix or sub-plan (which appendix or sub-plan may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator). To the extent that the terms and conditions set forth in an appendix or sub-plan conflict with any provisions of the Plan, the provisions of the appendix or sub-plan shall govern. The adoption of any such appendix or sub-plan shall be pursuant to Section 11.2(g). Without limiting the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are foreign nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions.

5.8 Leave of Absence. During leaves of absence approved by the Company meeting the requirements of Treasury Regulation Section 1.421-1(h)(2) under the Code, a Participant may continue participation in the Plan by making cash payments to the Company on his or her normal Payday equal to the Participant's authorized payroll deduction.

## **ARTICLE VI.**

### **GRANT AND EXERCISE OF RIGHTS**

6.1 Grant of Rights. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted a right to purchase the maximum number of Shares specified under Section 4.2, subject to the limits in Section 5.5, and shall have the right to buy, on each Purchase

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Date during such Offering Period (at the applicable Purchase Price), such number of whole Shares as is determined by dividing (a) such Participant's payroll deductions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date, by (b) the applicable Purchase Price (rounded down to the nearest Share). The right shall expire on the earliest of: (x) the last Purchase Date of the Offering Period, (y) the last day of the Offering Period, and (z) the date on which the Participant withdraws in accordance with Section 7.1 or Section 7.3.

6.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions and any other additional payments specifically provided for in the applicable Offering Document will be applied to the purchase of whole Shares, up to the maximum number of Shares permitted pursuant to the terms of the Plan and the applicable Offering Document, at the Purchase Price. No fractional Shares shall be issued upon the exercise of rights granted under the Plan, unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional Shares remaining after the purchase of whole Shares upon exercise of a purchase right will be credited to a Participant's account and carried forward and applied toward the purchase of whole Shares for the next following Offering Period. Shares issued pursuant to the Plan may be evidenced in such manner as the Administrator may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

6.3 Pro Rata Allocation of Shares. If the Administrator determines that, on a given Purchase Date, the number of Shares with respect to which rights are to be exercised may exceed (a) the number of Shares that were available for issuance under the Plan on the Enrollment Date of the applicable Offering Period, or (b) the number of Shares available for issuance under the Plan on such Purchase Date, the Administrator may in its sole discretion provide that the Company shall make a pro rata allocation of the Shares available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants for whom rights to purchase Shares are to be exercised pursuant to this Article VI on such Purchase Date, and shall either (i) continue all Offering Periods then in effect, or (ii) terminate any or all Offering Periods then in effect pursuant to Article IX. The Company may make pro rata allocation of the Shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date or such earlier date as determined by the Administrator.

6.4 Withholding. At the time a Participant's rights under the Plan are exercised, in whole or in part, or at the time some or all of the Shares issued under the Plan is disposed of, the Participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the right or the disposition of the Shares. At any time, the Company may, but shall not be obligated to, withhold from the Participant's Compensation or Shares received pursuant to the Plan the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Shares by the Participant.

6.5 Conditions to Issuance of 6.6 Shares. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, Shares purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions: (a) the admission of such Shares to listing on all stock exchanges, if any, on which the Shares are then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, that the Administrator shall, in its absolute discretion, deem necessary or advisable; (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable; (d) the payment to the Company of all amounts that it is required to withhold under federal, state or local law upon exercise of the rights, if any; and (e) the lapse of such reasonable period of time

following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

## **ARTICLE VII. WITHDRAWAL; CESSATION OF ELIGIBILITY**

7.1 Withdrawal. A Participant may withdraw all but not less than all of the payroll deductions credited to his or her account and not yet used to exercise his or her rights under the Plan at any time by giving written notice to the Company in a form acceptable to the Company no later than one week prior to the end of the Offering Period (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). All of the Participant's payroll deductions credited to his or her account during an Offering Period shall be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal and such Participant's rights for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of Shares shall be made for such Offering Period. If a Participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the next Offering Period unless the Participant timely delivers to the Company a new subscription agreement.

7.2 Future Participation. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or a Designated Subsidiary or in subsequent Offering Periods that commence after the termination of the Offering Period from which the Participant withdraws.

7.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, he or she shall be deemed to have elected to withdraw from the Plan pursuant to this Article VII and the payroll deductions credited to such Participant's account during the Offering Period shall be paid to such Participant or, in the case of his or her death, to the person or persons entitled thereto under Section 12.4, as soon as reasonably practicable, and such Participant's rights for the Offering Period shall be automatically terminated. If a Participant transfers employment from the Company or any Designated Subsidiary participating in the Section 423 Component to any Designated Subsidiary participating in the Non-Section 423 Component, such transfer shall not be treated as a termination of employment, but the Participant shall immediately cease to participate in the Section 423 Component; however, any contributions made for the Offering Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for the Participant's participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from any Designated Subsidiary participating in the Non-Section 423 Component to the Company or any Designated Subsidiary participating in the Section 423 Component shall not be treated as terminating the Participant's employment and shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component or (ii) the Enrollment Date of the first Offering Period in which the Participant is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between entities participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code.

## **ARTICLE VIII. ADJUSTMENTS UPON CHANGES IN SHARES**

8.1 Changes in Capitalization. Subject to Section 8.3, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), change in control, reorganization, merger, amalgamation, consolidation, combination, repurchase, redemption,

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recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event, as determined by the Administrator, affects the Shares such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any outstanding purchase rights under the Plan, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (a) the aggregate number and type of Shares (or other securities or property) that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 and the limitations established in each Offering Document pursuant to Section 4.2 on the maximum number of Shares that may be purchased); (b) the class(es) and number of Shares and price per Share subject to outstanding rights; and (c) the Purchase Price with respect to any outstanding rights.

8.2 Other Adjustments. Subject to Section 8.3, in the event of any transaction or event described in Section 8.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate (including without limitation, any change in control), or of changes in Applicable Law or accounting principles, the Administrator, in its discretion, and on such terms and conditions as it deems appropriate, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any right under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(a) To provide for either (i) termination of any outstanding right in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property selected by the Administrator in its sole discretion;

(b) To provide that the outstanding rights under the Plan shall be assumed by the successor or survivor corporation, or a Parent or Subsidiary thereof, or shall be substituted for by similar rights covering the stock of the successor or survivor corporation, or a Parent or Subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(c) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding rights under the Plan and/or in the terms and conditions of outstanding rights and rights that may be granted in the future;

(d) To provide that Participants' accumulated payroll deductions may be used to purchase Shares prior to the next occurring Purchase Date on such date as the Administrator determines in its sole discretion and the Participants' rights under the ongoing Offering Period(s) shall be terminated; and

(e) To provide that all outstanding rights shall terminate without being exercised.

8.3 No Adjustment Under Certain Circumstances. Unless determined otherwise by the Administrator, no adjustment or action described in this Article VIII or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Section 423 Component of the Plan to fail to satisfy the requirements of Section 423 of the Code.

8.4 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to



action of the Administrator under the Plan, 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 of Shares subject to outstanding rights under the Plan or the Purchase Price with respect to any outstanding rights.

## **ARTICLE IX. AMENDMENT, MODIFICATION AND TERMINATION**

9.1 Amendment, Modification and Termination. The Administrator may amend, suspend or terminate the Plan at any time and from time to time; provided, however, that approval of the Company's stockholders shall be required to amend the Plan to: (a) increase the aggregate number, or change the type, of shares that may be sold pursuant to rights under the Plan under Section 3.1 (other than an adjustment as provided by Article VIII) or (b) change the corporations or classes of corporations whose employees may be granted rights under the Plan.

9.2 Certain Changes to Plan. Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected (and, with respect to the Section 423 Component of the Plan, after taking into account Section 423 of the Code), the Administrator shall be entitled to change or terminate the Offering Periods, add or revise Offering Period share limits, limit the frequency and/or number of changes in the amount withheld from Compensation during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of payroll 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 Administrator determines in its sole discretion to be advisable that are consistent with the Plan.

9.3 Actions In the Event of Unfavorable Financial Accounting Consequences. In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

- (a) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;
- (b) shortening any Offering Period so that the Offering Period ends on a new Purchase Date, including an Offering Period underway at the time of the Administrator action; and
- (c) allocating Shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Participant.

9.4 Payments Upon Termination of Plan. Upon termination of the Plan, the balance in each Participant's Plan account shall be refunded as soon as practicable after such termination, without any interest thereon, or the Offering Period may be shortened so that the purchase of Shares occurs prior to the termination of the Plan.

## **ARTICLE X. TERM OF PLAN**

The Plan shall become effective on the Effective Date. The effectiveness of the Section 423 Component of the Plan shall be subject to approval of the Plan by the Company's stockholders within twelve months following

the date the Plan is first approved by the Board. No right may be granted under the Section 423 Component of the Plan prior to such stockholder approval. The Plan shall remain in effect until terminated under Section 9.1. No rights may be granted under the Plan during any period of suspension of the Plan or after termination of the Plan.

## **ARTICLE XI. ADMINISTRATION**

11.1 Administrator. Unless otherwise determined by the Board, the Administrator of the Plan shall be the Compensation Committee of the Board (or another committee or a subcommittee of the Board to which the Board delegates administration of the Plan). The Board may at any time vest in the Board any authority or duties for administration of the Plan. The Administrator may delegate administrative tasks under the Plan to the services of an Agent or Employees to assist in the administration of the Plan, including establishing and maintaining an individual securities account under the Plan for each Participant.

11.2 Authority of Administrator. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

- (a) To determine when and how rights to purchase Shares shall be granted and the provisions of each offering of such rights (which need not be identical).
- (b) To designate from time to time which Subsidiaries of the Company shall be Designated Subsidiaries, which designation may be made without the approval of the stockholders of the Company.
- (c) To impose a mandatory holding period pursuant to which Employees may not dispose of or transfer Shares purchased under the Plan for a period of time determined by the Administrator in its discretion.
- (d) To construe and interpret the Plan and rights granted under it, and to establish, amend and revoke rules and regulations for its administration. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.
- (e) To amend, suspend or terminate the Plan as provided in Article IX.
- (f) Generally, to exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and its Subsidiaries and to carry out the intent that the Plan be treated as an “employee stock purchase plan” within the meaning of Section 423 of the Code for the Section 423 Component.
- (g) The Administrator may adopt sub-plans applicable to particular Designated Subsidiaries or locations, which sub-plans may be designed to be outside the scope of Section 423 of the Code. The rules of such sub-plans may take precedence over other provisions of this Plan, with the exception of Section 3.1 hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan.

11.3 Decisions Binding. The Administrator’s interpretation of the Plan, any rights granted pursuant to the Plan, any subscription agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

**ARTICLE XII.  
MISCELLANEOUS**

12.1 Restriction upon Assignment. A right granted under the Plan shall not be transferable other than by will or the applicable laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. Except as provided in Section 12.4 hereof, a right under the Plan may not be exercised to any extent except by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or alienation of the Participant's interest in the Plan, the Participant's rights under the Plan or any rights thereunder.

12.2 Rights as a Stockholder. With respect to Shares subject to a right granted under the Plan, a Participant shall not be deemed to be a stockholder of the Company, and the Participant shall not have any of the rights or privileges of a stockholder, until such Shares have been issued to the Participant or his or her nominee following exercise of the Participant's rights under the Plan. No adjustments shall be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distribution or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein or as determined by the Administrator.

12.3 Interest. No interest shall accrue on the payroll deductions or contributions of a Participant under the Plan.

12.4 Designation of Beneficiary.

(a) A Participant may, in the manner determined by the Administrator, file a written designation of a beneficiary who is to receive any Shares and/or cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to a Purchase Date on which the Participant's rights are exercised but prior to delivery to such Participant of such Shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to exercise of the Participant's rights under the Plan. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary shall not be effective without the prior written consent of the Participant's spouse.

(b) Such designation of beneficiary may be changed by the Participant at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such Shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

12.5 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

12.6 Equal Rights and Privileges. Subject to Section 5.7, all Eligible Employees will have equal rights and privileges under the Section 423 Component so that the Section 423 Component of this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Subject to Section 5.7, any provision of the Section 423 Component that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board or the Administrator, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Eligible Employees participating in the Non-Section 423 Component need not have the same rights and privileges as other Eligible Employees participating in the Non-Section 423 Component or as Eligible Employees participating in the Section 423 Component.

12.7 Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

12.8 No Employment Rights. Nothing in the Plan shall be construed to give any person (including any Eligible Employee or Participant) the right to remain in the employ of the Company or any Parent or Subsidiary or affect the right of the Company or any Parent or Subsidiary to terminate the employment of any person (including any Eligible Employee or Participant) at any time, with or without cause.

12.9 Notice of Disposition of Shares. Each Participant shall give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of a right under the Section 423 Component of the Plan if such disposition or transfer is made: (a) within two years from the Enrollment Date of the Offering Period in which the Shares were purchased or (b) within one year after the Purchase Date on which such Shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

12.10 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced in accordance with the laws of the State of Delaware, disregarding any state's choice of law principles requiring the application of a jurisdiction's laws other than the State of Delaware.

12.11 Electronic Forms. To the extent permitted by Applicable Law and in the discretion of the Administrator, an Eligible Employee may submit any form or notice as set forth herein by means of an electronic form approved by the Administrator. Before the commencement of an Offering Period, the Administrator shall prescribe the time limits within which any such electronic form shall be submitted to the Administrator with respect to such Offering Period in order to be a valid election.

\* \* \* \* \*

Annex H-14

**SUBSCRIPTION AGREEMENT**

Horizon Acquisition Corp.  
600 Steamboat Road, Suite 200  
Greenwich, CT 06830

Ladies and Gentlemen:

This Subscription Agreement (this “Subscription Agreement”) is being entered into as of the date set forth on the signature page hereto, by and among Horizon Acquisition Corp., a Cayman Islands exempted company (“Horizon”), Vivid Seats Inc., a Delaware corporation (“VS PubCo”), which is a direct wholly owned subsidiary of Hoya Intermediate, LLC, a Delaware limited liability company (“Hoya”), and the undersigned subscriber (the “Investor”), in connection with the Transaction Agreement (as amended, modified, supplemented or waived from time to time in accordance with its terms, the “Transaction Agreement”), dated as of April 21, 2021 by and among Horizon, Horizon Sponsor, LLC, a Delaware limited liability company (“Sponsor”), Hoya Topco, LLC, a Delaware limited liability company (“Topco”), Hoya, and VS PubCo pursuant to which, among other things, Horizon will merge with and into VS PubCo (the “Merger”), the separate corporate existence of Horizon will cease and VS PubCo will be the surviving corporation of the Merger (such merger, the “Transaction”).

In connection with the Transaction, Horizon and VS PubCo are seeking commitments from interested investors to purchase in connection with the closing of the Transaction, shares of VS PubCo’s Class A common stock, par value \$0.0001 per share (the “Shares”), in a private placement for a purchase price of \$10.00 per share (the “Per Share Purchase Price”). On or about the date of this Subscription Agreement, Horizon and VS PubCo are entering into subscription agreements (the “Other Subscription Agreements” and together with the Subscription Agreement, the “Subscription Agreements”) with certain other investors (the “Other Investors” and together with the Investor, the “Investors”), severally and not jointly, pursuant to which the Investors, severally and not jointly, have agreed to purchase on the closing date of the Transaction, inclusive of the Shares subscribed for by the Investor, an aggregate amount of up to 22,500,000 Shares, at the Per Share Purchase Price, in which VS PubCo raises an aggregate of \$225,000,000. In addition, on or about the date of this Subscription Agreement, Horizon, Sponsor and Topco are entering into the Sponsor Support Agreement (the “Sponsor Support Agreement”), pursuant to which Sponsor agrees to, among other things, (i) vote at any meeting of Horizon’s stockholders, and in any action by written consent of Horizon’s stockholders, all of its Horizon equity securities in favor of the adoption and approval of the Transaction Agreement and the transactions contemplated thereby, including the Merger; (ii) be bound by certain other covenants and agreements related to the Transaction, (iii) be bound by certain transfer restrictions with respect to such securities and (iv) increase the amount of its subscription of Shares by the amount of any shortfall in available cash held by VS PubCo at the closing of the Transaction in consideration for a fee, in each case, on the terms and subject to the conditions set forth in the Sponsor Support Agreement. For the avoidance of doubt, for purposes of this Agreement, the “Other Subscription Agreements” shall not include the Sponsor Support Agreement. In addition, on or about the date of this Subscription Agreement, Horizon and Sponsor are entering into the Exchange Agreement (as amended, modified, supplemented or waived from time to time in accordance with its terms, the “Exchange Agreement”) pursuant to which, among other things, effective at least one day prior to the Merger, Sponsor will irrevocably surrender to Horizon 13,599,608 Class B ordinary shares of Horizon, par value \$0.0001 per share (the “Class B Shares”), in exchange for (a) warrants to purchase 17,000,000 Class A ordinary shares of Horizon, par value \$0.0001 per share (the “Class A Shares”), at an exercise price of \$10.00 per share, (b) warrants to purchase 17,000,000 Class A Shares at an exercise price of \$15.00 per share and (c) 50,000 Class A Shares.

The aggregate purchase price to be paid by the Investor for the subscribed Shares (as set forth on the signature page hereto) is referred to herein as the “Subscription Amount.”

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In connection therewith, and in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, set forth herein, and intending to be legally bound hereby, each of the Investor, Horizon and VS PubCo acknowledges and agrees as follows:

1. Subscription. The Investor hereby irrevocably subscribes for and agrees to purchase from VS PubCo, and VS PubCo agrees to issue and sell to the Investor, the number of Shares set forth on the signature page of this Subscription Agreement on the terms and subject to the conditions provided for herein. The Investor acknowledges and agrees that the Investor's subscription for the Shares shall be deemed to be accepted by Horizon and VS PubCo only when this Subscription Agreement is signed by a duly authorized person by or on behalf of each of Horizon and VS PubCo; each of Horizon and VS PubCo may do so in counterpart form.

2. Closing. The closing of the sale of the Shares contemplated hereby (the "Closing") is contingent upon the substantially concurrent consummation of the Transaction. The Closing shall occur on the date of, and substantially concurrently with and conditioned upon the effectiveness of, the Transaction. Upon (a) satisfaction or waiver of the conditions set forth in Section 3 below and (b) delivery of written notice from (or on behalf of) VS PubCo to the Investor (the "Closing Notice"), that VS PubCo reasonably expects all conditions to the closing of the Transaction to be satisfied or waived on a date that is not less than five (5) business days from the date on which the Closing Notice is delivered to the Investor, the Investor shall deliver to VS PubCo, three (3) business days prior to the closing date specified in the Closing Notice (the "Closing Date"), the Subscription Amount by wire transfer of United States dollars in immediately available funds to the account(s) specified by VS PubCo in the Closing Notice. On the Closing Date, VS PubCo shall issue a number of Shares to the Investor set forth on the signature page to this Subscription Agreement and subsequently cause such Shares to be registered in book entry form in the name of the Investor (or its nominee) or as otherwise directed by the Investor, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), on VS PubCo's share register; provided, however, that VS PubCo's obligation to issue the Shares to the Investor is contingent upon VS PubCo having received the Subscription Amount in full accordance with this Section 2. For purposes of this Subscription Agreement, "business day" shall mean a day, other than a Saturday or Sunday, on which commercial banks in New York, New York are open for the general transaction of business. In the event the Closing Date does not occur within one (1) business day after the expected closing date set forth in the Closing Notice, VS PubCo shall promptly (but not later than two business days thereafter) return the Subscription Amount to the Investor, and any book entries shall be deemed cancelled.

3. Closing Conditions.

a. The obligation of the parties hereto to consummate the purchase and sale of the Shares pursuant to this Subscription Agreement is subject to the following conditions:

(i) there shall not be in force any order, judgment or injunction, in each case, entered into by or with any governmental authority which is then in effect and has the effect of making consummation of the transactions contemplated hereby illegal or otherwise restraining or prohibiting consummation of the transactions contemplated hereby; and

(ii) (A) all conditions precedent to the closing of the Transaction under the Transaction Agreement shall have been satisfied (as determined by the parties to the Transaction Agreement and other than those conditions under the Transaction Agreement which, by their nature, are to be satisfied at the closing of the Transaction, including to the extent that any such condition is dependent upon the consummation of the purchase and sale of the Shares pursuant to this Subscription Agreement) or waived and (B) the closing of the Transaction shall be scheduled to occur concurrently with or on the same date as the Closing.

b. In addition to the conditions set forth in Section 3(a), the obligation of VS PubCo to consummate the issuance and sale of the Shares pursuant to this Subscription Agreement shall be subject to the condition that all representations and warranties of the Investor contained in this Subscription Agreement are true and correct in

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all material respects (other than representations and warranties that are qualified as to materiality, which representations and warranties shall be true in all respects) at and as of the Closing Date (unless they specifically speak as of an earlier date, in which case they shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality, which representations and warranties shall be true in all respects) as of such date), and consummation of the Closing shall constitute a reaffirmation by the Investor of each of the representations and warranties of the Investor contained in this Subscription Agreement as of the Closing Date.

c. In addition to the conditions set forth in Section 3(a), the obligation of the Investor to consummate the purchase of the Shares pursuant to this Subscription Agreement shall be subject to the following conditions that: (i) (A) the representations and warranties of Horizon and VS PubCo contained in Sections 5(a), 5(c) and 5(l) of this Subscription Agreement shall be true and correct in all material respects at and as of the Closing Date and (B) all other representations and warranties of Horizon and VS PubCo contained in this Subscription Agreement shall be true and correct at and as of the Closing Date, other than any failures to be true and correct that would not result, individually or in the aggregate, in a Material Adverse Effect, (ii) each of Horizon and VS PubCo shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Subscription Agreement to have been performed, satisfied or complied with by it at or prior to Closing, (iii) except to the extent consented to in writing by the Investor, the Transaction Agreement (as the same exists on the date hereof) shall not have been amended or modified, and no waiver shall have occurred thereunder, that would reasonably be expected to materially adversely affect the economic benefits that the Investor would reasonably expect to receive under this Subscription Agreement, (iv) there shall have been no amendment, waiver or modification to the Other Subscription Agreements (including via a side letter or other agreement) that materially benefits the Other Investors thereunder unless the Investor has been offered the same benefits, and (v) no suspension of the qualification of the Shares for offering or sale in any jurisdiction shall have occurred, and the Shares acquired hereunder shall have been approved for listing on the NYSE (as defined below), subject to official notice of issuance.

4. Further Assurances. At the Closing, the parties hereto shall execute and deliver such additional documents and take such additional actions as the parties reasonably may deem to be practical and necessary in order to consummate the subscription as contemplated by this Subscription Agreement.

5. Horizon and VS PubCo Representations and Warranties. Each of Horizon and VS PubCo, as applicable, represents and warrants to the Investor that:

a. Horizon is an exempted company duly incorporated, validly existing and in good standing under the laws of the Cayman Islands (to the extent such concept exists in such jurisdiction). Horizon has all power (corporate or otherwise) and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement. VS PubCo is duly incorporated, validly existing and in good standing under the laws of the State of Delaware. VS PubCo has all power (corporate or otherwise) and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

b. As of the Closing Date, the Shares will be duly authorized and, when issued and delivered to the Investor against full payment therefor in accordance with the terms of this Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable and will not have been issued in violation of or subject to any preemptive or similar rights created under VS PubCo's certificate of incorporation or bylaws (each as amended as of the Closing Date), by contract or under the General Corporation Law of the State of Delaware.

c. This Subscription Agreement has been duly authorized, executed and delivered by each of Horizon and VS PubCo and, assuming that this Subscription Agreement constitutes the valid and binding agreement of the Investor, this Subscription Agreement is enforceable against each of Horizon and VS PubCo in accordance

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with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, or (ii) principles of equity, whether considered at law or equity.

d. The execution and delivery of, and the performance of the transactions contemplated by this Subscription Agreement, including the issuance and sale of the Shares and the compliance by each of Horizon and VS PubCo with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Horizon or VS PubCo, as applicable, pursuant to the terms of (i) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which Horizon or VS PubCo, as applicable, is a party or by which Horizon or any of its subsidiaries is bound or to which any of the property or assets of Horizon or VS PubCo, as applicable, is subject that would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of Horizon or VS PubCo, as applicable, taken as a whole (a “Material Adverse Effect”) or materially affect the validity of the Shares or the legal authority of Horizon or VS PubCo, as applicable, to comply in all material respects with the terms of this Subscription Agreement; (ii) result in any violation of the provisions of the organizational documents of Horizon or VS PubCo, as applicable; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over Horizon or VS PubCo, as applicable, or any of their respective properties that would reasonably be expected to have a Material Adverse Effect or materially affect the validity of the Shares or the legal authority of Horizon or VS PubCo, as applicable, to comply in all material respects with this Subscription Agreement.

e. As of their respective dates, all reports (the “SEC Reports”) required to be filed by Horizon with the U.S. Securities and Exchange Commission (the “SEC”) complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended, (the “Securities Act”) and the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of Horizon included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing and fairly present in all material respects the financial position of Horizon as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. The Investor acknowledges that (i) the Staff of the SEC issued the Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies on April 12, 2021 (the “Statement”), (ii) Horizon continues to review the Statement and its implications, including on the financial statements and other information included in its SEC Reports and (iii) any restatement, revision or other modification of the SEC Reports in connection with such a review of the Statement or any subsequent related agreements or other guidance from the Staff of the SEC shall be deemed not material for purposes of this Agreement, including for purposes of this Section 5(e) and Section 6(f) below. A copy of each SEC Report is available to the Investor via the SEC’s EDGAR system. There are no outstanding or unresolved comments in comment letters received by Horizon from the staff of the Division of Corporation Finance of the SEC with respect to any of the SEC Reports.

f. Assuming the accuracy of the Investor’s representations and warranties set forth in Section 6 of this Subscription Agreement, neither Horizon nor VS PubCo is required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the execution, delivery and performance by Horizon or VS PubCo of this Subscription Agreement (including, without limitation, the issuance of the Shares), other than (i) filings with the SEC, (ii) filings required by applicable state securities laws, (iii) filings required in accordance with Section 12 of this Subscription Agreement, (iv) filings



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required by the New York Stock Exchange (“[NYSE](#)”), including with respect to obtaining approval of Horizon’s shareholders, if applicable, (v) the filing of notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, if applicable and (vi) filings that the failure of which to obtain would not be reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

g. Except for such matters as have not had and would not be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect, there is no (i) action, suit, claim or other proceeding, in each case by or before any governmental authority pending, or, to the knowledge of Horizon, threatened against Horizon or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against Horizon. Except for such matters as have not had and would not be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect, there is no (i) action, suit, claim or other proceeding, in each case by or before any governmental authority pending, or, to the knowledge of VS PubCo, threatened against VS PubCo or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against VS PubCo. Each of Horizon and VS PubCo is in compliance with all applicable laws, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect. Horizon has not received any written communication from a governmental authority that alleges that Horizon is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. VS PubCo has not received any written communication from a governmental authority that alleges that VS PubCo is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

h. As of the date of this Subscription Agreement, the authorized share capital of Horizon consists of (i) 400,000,000 Class A Shares, of which 54,398,433 shares are issued and outstanding, (ii) 40,000,000 Class B Shares, of which 13,599,608 shares are issued and outstanding and (iii) 1,000,000 preference shares of par value of \$0.0001 each, of which no shares are issued and outstanding. As of the date of this Subscription Agreement, 24,652,580 warrants to purchase Class A Shares, with each such warrant exercisable for one whole Class A Share at a price of \$11.50 per share, are issued and outstanding. All (1) issued and outstanding Class A Shares and Class B Shares have been duly authorized and validly issued, are fully paid and are non-assessable and are not subject to preemptive rights and (2) outstanding warrants have been duly authorized and validly issued and are not subject to preemptive rights. Except as set forth above and pursuant to the Other Subscription Agreements, the Transaction Agreement, the Sponsor Support Agreement, the Exchange Agreement and the other agreements and arrangements referred to therein or in the SEC Reports, as of the date hereof, there are no outstanding options, warrants or other rights to subscribe for, purchase or acquire from Horizon any Class A Shares, Class B Shares or other equity interests in Horizon, or securities convertible into or exchangeable or exercisable for such equity interests. There are no securities or instruments issued by or to which Horizon is a party containing anti-dilution or similar provisions that will be triggered by the transactions contemplated by the Transaction Agreement or the issuance of the Shares hereunder or pursuant to the Other Subscription Agreements. As of the date hereof, Horizon has no subsidiaries and does not own, directly or indirectly, interests or investments (whether equity or debt) in any person, whether incorporated or unincorporated. There are no shareholder agreements, voting trusts or other agreements or understandings to which Horizon is a party or by which it is bound relating to the voting of any securities of Horizon, other than (1) as set forth in the SEC Reports and (2) as contemplated by the Transaction Agreement. The authorized capital stock of VS PubCo as of the date hereof consists of 1,000 shares of common stock, par value \$0.01 per share (“Common Stock”). As of the date hereof 100 shares of Common Stock are issued and outstanding.

i. As of the date hereof, the issued and outstanding Class A Shares of Horizon are registered pursuant to Section 12(b) of the Exchange Act, and are listed for trading on the NYSE under the symbol “HZAC” (it being understood that the trading symbol will be changed in connection with the Transaction). There is no suit, action, proceeding or investigation pending or, to the knowledge of Horizon, threatened against Horizon by NYSE or the SEC, respectively, to prohibit or terminate the listing of Horizon’s Class A Shares on NYSE or to deregister the Class A Shares under the Exchange Act. Horizon has taken no action that is designed to terminate the registration

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of the Class A Shares under the Exchange Act, other than as contemplated by the Transaction Agreement. Upon consummation of the Closing, the Shares will be registered pursuant to Section 12(b) of the Exchange Act and will be listed for trading on NYSE, and the Shares issued hereunder will be approved for listing on the NYSE, subject to official notice of issuance.

j. Assuming the accuracy of the Investor's representations and warranties set forth in Section 6 of this Subscription Agreement, no registration under the Securities Act is required for the offer and sale of the Shares hereunder. The Shares (i) were not offered by any form of general solicitation or general advertising and (ii) are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act or any state securities laws.

k. VS PubCo is not, and immediately after receipt of payment for the Shares will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

l. Neither Horizon nor VS PubCo has entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other person to any broker's or finder's fee or any other commission or similar fee in connection with the transactions contemplated by this Subscription Agreement for which the undersigned could become liable. Other than the Placement Agents (as defined below), neither Horizon nor VS PubCo is aware of any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Shares.

m. If the Investor is an individual, Horizon and VS PubCo hereby understand and acknowledge that neither Placement Agent, nor any of their respective affiliates is acting as a placement agent in connection with the offer and sale of the Shares to the Investor.

a. Neither Horizon nor VS PubCo has entered into any side letter or similar agreement with any Other Investor or any other investor in connection with such Other Investor's or other investor's direct or indirect investment in VS PubCo or Horizon other than the Other Subscription Agreements, the Transaction Agreement and the Sponsor Support Agreement to be entered into substantially concurrently with the entry into the Transaction Agreement. The Other Subscription Agreements reflect the same Per Share Purchase Price and other terms and conditions with respect to the purchase of Shares that are no more favorable to such investor thereunder than the terms of this Subscription Agreement, other than terms particular to the regulatory requirements of such investor or its affiliates or related funds that are mutual funds or are otherwise subject to regulations related to the timing of funding and the issuance of the related Shares.

6. Investor Representations and Warranties. The Investor represents and warrants to Horizon, on behalf of itself and, if applicable, each account for which it is acquiring the Shares, that:

a. The Investor (i) is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an institutional "accredited investor" (within the meaning of Rule 501(a) under the Securities Act), in each case, satisfying the applicable requirements set forth on Schedule A, (ii) is acquiring the Shares only for his, her or its own account and not for the account of others, or if the Investor is subscribing for the Shares as a fiduciary or agent for one or more investor accounts, each owner of such account is a qualified institutional buyer, and the Investor has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations, warranties and agreements herein on behalf of each owner of each such account, and (iii) is not acquiring the Shares with a view to, or for offer or sale in connection with, any distribution of the Shares in any manner that would violate the Securities Act (and shall provide the requested information set forth on Schedule A) or any securities laws of the United States or any other jurisdiction. The Investor is not an entity formed for the specific purpose of acquiring the Shares. The Investor further acknowledges that it is aware that the sale to it is being made in reliance on a private placement exemption from registration under the Securities Act and is acquiring the Shares for its own account or for an account over which it exercises sole discretion for another qualified institutional buyer or accredited investor.

b. The Investor (i) is an institutional account as defined in FINRA Rule 4512(c), (ii) is a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including its participation in the purchase of the Shares, and (iii) has exercised independent judgment in evaluating its participation in the purchase of the Shares. Accordingly, the Investor understands that the offering meets (i) the exemptions from filing under FINRA Rule 5123(b)(1)(A) and (ii) the institutional customer exemption under FINRA Rule 2111(b).

c. The Investor acknowledges and agrees that the Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Shares have not been registered under the Securities Act or any other applicable securities laws. The Investor acknowledges and agrees that the Shares are being offered for resale in transactions not requiring registration under the Securities Act, and unless so registered, may not be offered, sold, pledged or otherwise transferred by the Investor except in compliance with the registration requirements of the Securities Act or any other applicable securities laws, pursuant to any exemption therefrom or in a transaction not subject thereto. The Investor acknowledges and agrees that the Shares will not be immediately eligible for resale pursuant to Rule 144 promulgated under the Securities Act. The Investor acknowledges and agrees that it has been advised to consult legal counsel prior to making any offer, resale, transfer, pledge or disposition of any of the Shares.

d. The Investor acknowledges and agrees that the Investor is purchasing the Shares from VS PubCo. The Investor further acknowledges that there have been no representations, warranties, covenants and agreements made to the Investor by or on behalf of Horizon, VS PubCo, or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing or any other person or entity, expressly or by implication, other than those representations, warranties, covenants and agreements of Horizon and VS PubCo, as applicable, expressly set forth in Section 5 of this Subscription Agreement.

e. The Investor's acquisition and holding of the Shares will not constitute or result in a non-exempt prohibited transaction under Section 406 of the Employee Retirement Income Security Act of 1974, as amended, Section 4975 of the Internal Revenue Code of 1986, as amended, or any applicable similar law.

f. The Investor acknowledges and agrees that the Investor has received such information as the Investor deems necessary in order to make an investment decision with respect to the Shares, including, with respect to Horizon, VS PubCo, the Transaction and the business of Vivid Seats LLC and its direct and indirect subsidiaries (together, the "Target"). Without limiting the generality of the foregoing, the Investor acknowledges that he, she or it has reviewed the SEC Reports. The Investor acknowledges and agrees that the Investor and the Investor's professional advisor(s), if any, have had an opportunity to directly ask such questions, receive such answers and obtain such information from Horizon and VS PubCo as the Investor and such Investor's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Shares.

g. The Investor became aware of this offering of the Shares solely by means of direct contact between the Investor and Horizon, VS PubCo or a representative of Horizon or VS PubCo, and the Shares were offered to the Investor solely by direct contact between the Investor and Horizon, VS PubCo or a representative of Horizon or VS PubCo. The Investor did not become aware of this offering of the Shares, nor were the Shares offered to the Investor, by any other means. The Investor acknowledges that the Shares (i) were not offered to it by any form of general solicitation or general advertising and (ii) are not being offered to it in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws. The Investor acknowledges that it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, firm or corporation (including, without limitation, Horizon, VS PubCo, the Placement Agents, any of their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), other than the representations and warranties of Horizon and VS PubCo, as applicable, contained in Section 5 of this Subscription Agreement, in making its investment decision with respect to the Shares.

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h. The Investor acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Shares, including those set forth in Horizon's and/or VS PubCo's, as applicable, filings with the SEC. The Investor has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Shares, and the Investor has sought such accounting, legal and tax advice as the Investor has considered necessary to make an informed investment decision.

i. Alone, or together with any professional advisor(s), the Investor has analyzed and fully considered the risks of an investment in the Shares and determined that the Shares are a suitable investment for the Investor and that the Investor is able at this time and in the foreseeable future to bear the economic risk of a total loss of the Investor's investment in the Shares. The Investor acknowledges specifically that a possibility of total loss exists.

j. The Investor acknowledges that it is able to fend for itself in the transactions contemplated herein; has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Shares; and has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment. None of the Placement Agents, any of their respective affiliates or any of them or their control persons, officers, directors or employees shall have any liability to it or any account for which it is acquiring the Shares, in connection with any purchase of the Shares.

k. Except for the representations, warranties and agreements of Horizon, VS PubCo or their respective affiliates expressly set forth in any purchase agreement or similar document, the Investor is relying on its own sources of information, investment analysis and due diligence (including professional advice it deems appropriate) with respect to the Transaction, the Shares and the business, financial condition or results of operations of Horizon, VS PubCo or their respective affiliates, including but not limited to all business, legal, regulatory, accounting, credit and tax matters. In making its decision to purchase the Shares, the Investor has relied solely upon its own independent investigation of Horizon, VS PubCo, the Target, their respective affiliates, the Shares and the offer and sale of the Shares. Without limiting the generality of the foregoing, the Investor has not relied on any statements or other information provided by or on behalf of the Placement Agents or any of their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing concerning Horizon, VS PubCo, the Target, the Transaction, the Transaction Agreement, this Subscription Agreement or the transactions contemplated hereby or thereby, the Shares or the offer and sale of the Shares. The Investor further acknowledges it has (i) had access to, and an adequate opportunity to review and understand the materials and information made available to it in connection with the Transaction, including financial and other information as it deems necessary to make its decision to purchase the Shares, and (ii) has made its own assessment and satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Shares.

l. The Investor acknowledges that no federal or state agency has passed upon or endorsed the merits of the offering of the Shares or made any findings or determination as to the fairness of this investment.

m. The Investor, if not an individual, has been duly formed or incorporated and is validly existing and is in good standing under the laws of its jurisdiction of formation or incorporation, with power and authority to enter into, deliver and perform its obligations under this Subscription Agreement.

n. The execution, delivery and performance by the Investor of this Subscription Agreement are within the powers of the Investor, have been duly authorized and will not constitute or result in a breach or default under or conflict with any order, ruling or regulation of any court or other tribunal or of any governmental commission or agency, or any agreement or other undertaking, to which the Investor is a party or by which the Investor is bound, and, if the Investor is not an individual, will not violate any provisions of the Investor's organizational documents, including, without limitation, its incorporation or formation papers, bylaws, indenture of trust or partnership or operating agreement, as may be applicable. The signature on this Subscription Agreement is

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genuine, and the signatory, if the Investor is an individual, has legal competence and capacity to execute the same or, if the Investor is not an individual, the signatory has been duly authorized to execute the same, and, assuming that this Subscription Agreement constitutes the valid and binding agreement of Horizon and VS PubCo, this Subscription Agreement constitutes a legal, valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally or (ii) principles of equity, whether considered at law or equity.

o. The Investor is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or in any Executive Order issued by the President of the United States and administered by OFAC ("OFAC List"), or a person or entity prohibited by any OFAC sanctions program, (ii) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (iii) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank. The Investor agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that the Investor is permitted to do so under applicable law. If the Investor is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), the Investor maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. To the extent required, it maintains policies and procedures reasonably designed for the screening of its investors against the OFAC sanctions programs, including the OFAC List. To the extent required by applicable law, the Investor maintains policies and procedures reasonably designed to ensure that the funds held by the Investor and used to purchase the Shares were legally derived.

p. No disclosure or offering document has been prepared by Credit Suisse Securities (USA) LLC ("Credit Suisse"), Evercore Group L.L.C. ("Evercore"), or any of their respective affiliates (collectively, the "Placement Agents") in connection with the offer and sale of the Shares.

q. Neither the Placement Agents, nor any of their respective affiliates, nor any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing have made any independent investigation with respect to Horizon, VS PubCo, the Target or their respective affiliates or any of their respective businesses, or the Shares or the accuracy, completeness or adequacy of any information supplied to the Investor by Horizon, VS PubCo, the Target or their respective affiliates. The Placement Agents have not made and do not make any representations as to Horizon, VS PubCo, the Target or the quality or value of the Shares.

r. The Investor acknowledges that, in connection with the issue and purchase of the Shares, the Placement Agents have not acted as its financial advisor or fiduciary. In addition, the Investor acknowledges and agrees that the Placement Agents have not provided any recommendation or investment advice nor have the Placement Agents solicited any action from it with respect to the offer and sale of the Shares and it has consulted with its own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate. The Investor further acknowledges and agrees that, although the Placement Agents may choose to provide certain Regulation Best Interest and Form CRS disclosures or other documentation to it in connection with the offer and sale of the Shares, the Placement Agents are not making a recommendation to participate in the offer and sale of the Shares, or to enter into any purchase agreement or similar document, and nothing set forth in any such disclosure or documents that may be provided to it from time to time is intended to suggest that the Placement Agents are making such a recommendation.

s. The Investor has or has commitments to have and, when required to deliver payment to VS PubCo pursuant to Section 2 above, will have, sufficient funds to pay the Subscription Amount and consummate the purchase and sale of the Shares pursuant to this Subscription Agreement.

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t. The Investor acknowledges that the purchase and sale of Shares hereunder meets the exemptions from filing under FINRA Rule 5123(b)(1)(C) or (J).

u. The Investor acknowledges that Placement Agents may have acquired, or during the term of this Subscription Agreement may acquire, non-public information with respect to Horizon, VS PubCo, the Target or their respective affiliates, which the Investor agrees, subject to requirements under applicable law, need not be provided to it.

v. The Investor hereby acknowledges and agrees that (a) Credit Suisse is acting solely as Placement Agent in connection with the Transaction and is not acting as an underwriter or in any other capacity and is not and shall not be construed as a fiduciary for it, Horizon, VS PubCo, their respective affiliates or any other person or entity in connection with the Transaction, (b) Credit Suisse has not made and will not make any representation or warranty, whether express or implied, of any kind or character and has not provided any advice or recommendation in connection with the Transaction, (c) Credit Suisse will have no responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the Transaction or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, financial condition or results of operations of Horizon, VS PubCo, the Target, their respective affiliates or the Transaction, and (d) Credit Suisse shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by it, Horizon, VS PubCo, their respective affiliates or any other person or entity), whether in contract, tort or otherwise, to it, or to any person claiming through it, in respect of the Transaction.

w. The Investor acknowledges that Evercore is acting both as placement agent in connection with the offer and sale of the Shares to be issued pursuant to this Transaction and as financial advisor to the Target in connection with the business combination to which the sale of the Shares relates, and that Evercore may receive fees both for its placement agent services and financial advisory services. The Investor also acknowledges and agrees that (a) Evercore is not acting as an underwriter and is not and shall not be construed as a fiduciary for it, Horizon, VS PubCo, their respective affiliates or any other person or entity in connection with the Transaction; provided, however, that Evercore is acting as a financial advisor to the Target, (b) Evercore has not made and will not make any representation or warranty, whether express or implied, of any kind or character and have not provided any advice or recommendation in connection with the Transaction, (c) Evercore will have no responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the Transaction or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, financial condition or results of operations of Horizon, VS PubCo, the Target, any of their respective affiliates or the Transaction, and (d) Evercore shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by it, Horizon, VS PubCo, their respective affiliates or any other person or entity), whether in contract, tort or otherwise, to it, or to any person claiming through it, in respect of the Transaction.

x. If the Investor is an individual, the Investor hereby understands and acknowledges that neither Placement Agent, nor any of their respective affiliates is acting as a placement agent in connection with the offer and sale of the Shares to the Investor.

### 7. Registration Rights.

a. In the event that the Shares are not registered in connection with the consummation of the Transaction, VS PubCo agrees that, within thirty (30) calendar days after the consummation of the Transaction (the "Filing Deadline"), it will file with the SEC (at its sole cost and expense) a registration statement registering the resale of the Shares (the "Registration Statement"), and it shall use its commercially reasonable efforts to

have the Registration Statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) ninety (90) calendar days after the filing thereof (or one hundred and twenty (120) calendar days after the filing thereof if the SEC notifies VS PubCo that it will “review” the Registration Statement) and (ii) ten (10) business days after VS PubCo is notified (orally or in writing, whichever is earlier) by the SEC that the Registration Statement will not be “reviewed” or will not be subject to further review (such date, the “Effectiveness Date”). VS PubCo agrees to cause such Registration Statement, or another shelf registration statement that includes the Shares to be sold pursuant to this Subscription Agreement, to remain effective until the earliest of (i) the second anniversary of the date the initial Registration Statement filed hereunder is declared effective, (ii) the date on which the Investor ceases to hold any Shares issued pursuant to this Subscription Agreement, or (iii) the date on which the Investor is able to sell all of its Shares issued pursuant to this Subscription Agreement (or shares received in exchange therefor) under Rule 144 of the Securities Act within ninety (90) days without limitation as to the amount of such securities that may be sold and without the requirement for VS PubCo to be in compliance with the current public information requirement under Rule 144(c) (or Rule 144(i)(2), if applicable) (the earliest of (i)–(iii) being the “Expiration”). The Investor agrees to disclose its ownership to VS PubCo upon request to assist it in making the determination described above. The Investor acknowledges and agrees that VS PubCo may suspend the use of any such registration statement if it determines in good faith that, in order for such registration statement not to contain a material misstatement or omission, an amendment thereto would be needed to include information that would at that time not otherwise be required in a current, quarterly, or annual report under the Exchange Act, provided, that (A) VS PubCo shall not so delay filing or so suspend the use of the Registration Statement for a period of more than sixty (60) consecutive days or more than a total of one hundred and twenty (120) calendar days, in each case in any three hundred sixty (360) day period, and (B) VS PubCo shall use commercially reasonable efforts to make such registration statement available for the sale by the Investor of such securities as soon as practicable thereafter. VS PubCo’s obligations to include the Shares issued pursuant to this Subscription Agreement (or shares issued in exchange therefor) for resale in the Registration Statement are contingent upon the Investor furnishing in writing to VS PubCo such information regarding the Investor, the securities of VS PubCo held by the Investor and the intended method of disposition of such Shares, which shall be limited to non-underwritten public offerings, as shall be reasonably requested by VS PubCo to effect the registration of such Shares, and shall execute such documents in connection with such registration as VS PubCo may reasonably request that are customary of a selling stockholder in similar situations, provided, however, that the Investor shall not in connection with the foregoing be required to execute any lock-up or similar agreement or otherwise be subject to any contractual restriction on the ability to transfer the Shares. VS PubCo will provide a draft of the Registration Statement to the Investor for review at least two (2) business days in advance of filing the Registration Statement. So long as the Investor delivers to VS PubCo a completed questionnaire (which shall include representations and warranties as to relevant matters), the Investor shall not be identified as a statutory underwriter in the Registration Statement unless in response to a comment or request from the staff of the SEC or another regulatory agency; provided, however, that if the SEC requests that the Investor be identified as a statutory underwriter in the Registration Statement, the Investor will have an opportunity to withdraw from the Registration Statement. Notwithstanding the foregoing, if the SEC prevents VS PubCo from including any or all of the Shares proposed to be registered under the Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Shares by the applicable shareholders or otherwise, such Registration Statement shall register for resale such number of Shares which is equal to the maximum number of Shares as is permitted by the SEC. In such event, the number of Shares to be registered for each selling shareholder named in the Registration Statement shall be reduced pro rata among all such selling shareholders and as promptly as practicable after being permitted to register additional Shares under Rule 415 under the Securities Act, VS PubCo shall file a new Registration Statement to register such Shares not included in the initial Registration Statement and cause such Registration Statement to become effective as promptly as practicable consistent with the terms of this Section 7. For purposes of clarification, any failure by VS PubCo to file the Registration Statement by the Filing Deadline or to effect such Registration Statement by the Effectiveness Date shall not otherwise relieve VS PubCo of its obligations to file or effect the Registration Statement set forth in this Section 7. For purposes of this Section 7, “Shares” shall mean, as of any date of determination, the Shares acquired by the Investor pursuant to this Subscription Agreement and any other equity security issued or issuable with respect to such Shares by way of



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stock split, dividend, distribution, recapitalization, merger, exchange, replacement or similar event, and “Investor” shall include any affiliate of the undersigned Investor to which the rights under this Section 7 have been duly assigned.

b. Prior to the Expiration, VS PubCo shall advise the Investor within three (3) business days (at VS PubCo’s expense): (i) when a Registration Statement or any post-effective amendment thereto has become effective; (ii) of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose; (iii) of the receipt by VS PubCo of any notification with respect to the suspension of the qualification of the Shares included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and (iv) subject to the provisions in this Subscription Agreement, of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading (provided that any such notice pursuant to this Section 7(b)(iv) shall solely provide that the use of the Registration Statement or prospectus has been suspended without setting forth the reason for such suspension). VS PubCo shall use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as soon as reasonably practicable. Upon the occurrence of any event contemplated in clauses (i) through (iv) above, except for such times as VS PubCo is permitted hereunder to suspend, and has suspended, the use of a prospectus forming part of a registration statement, VS PubCo shall use its commercially reasonable efforts to as soon as reasonably practicable prepare a post-effective amendment to such registration statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Shares included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Investor agrees that it will immediately discontinue offers and sales of the Shares using a Registration Statement until the Investor receives copies of a supplemental or amended prospectus that corrects the misstatement(s) or omission(s) referred to above in clause (iv) and receives notice that any post-effective amendment has become effective or unless otherwise notified by VS PubCo that it may resume such offers and sales. If so directed by VS PubCo, the Investor will deliver to VS PubCo or, in the Investor’s sole discretion destroy, all copies of the prospectus covering the Shares in the Investor’s possession; provided, however, that this obligation to deliver or destroy all copies of the prospectus covering the Shares shall not apply (x) to the extent the Investor is required to retain a copy of such prospectus in order to comply with applicable legal, regulatory, self-regulatory or professional requirements or in accordance with a bona fide pre-existing document retention policy or (y) to copies stored electronically on archival servers as a result of automatic data back-up.

c. Prior to the Expiration, VS PubCo will use commercially reasonable efforts to file all reports necessary to enable the undersigned to resell the Shares pursuant to the Registration Statement. For as long as the Investor holds Shares, VS PubCo will use commercially reasonable efforts to file all reports necessary to enable the undersigned to resell the Shares pursuant to Rule 144 of the Securities Act (when Rule 144 of the Securities Act becomes available to the Investor). In addition, in connection with any sale, assignment, transfer or other disposition of the Shares by the Investor pursuant to Rule 144 or pursuant to any other exemption under the Securities Act such that the Shares held by the Investor become freely tradable and upon compliance by the Investor with the requirements of this Section 7(c), if requested by the Investor, VS PubCo shall cause the transfer agent for the Shares (the “Transfer Agent”) to remove any restrictive legends related to the book entry account holding such Shares and make a new, unlegended entry for such book entry Shares sold or disposed of without restrictive legends within three (3) trading days of any such request therefor from the Investor, provided that VS PubCo and the Transfer Agent have timely received from the Investor customary representations and other documentation reasonably acceptable to VS PubCo and the Transfer Agent in connection therewith. Subject to receipt from the Investor by VS PubCo and the Transfer Agent of customary representations and other documentation reasonably acceptable to VS PubCo and the Transfer Agent in connection therewith, the Investor may request that VS PubCo remove any legend from the book entry position evidencing its Shares and VS



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PubCo will, if required by the Transfer Agent, cause an opinion of VS PubCo's counsel be provided, in a form reasonably acceptable to the Transfer Agent, to the effect that the removal of such restrictive legends in such circumstances may be effected under the Securities Act, following the earliest of such time as such Shares (i) (x) are subject to or (y) have been or are about to be sold or transferred pursuant to an effective registration statement, (ii) have been or are about to be sold pursuant to Rule 144, or (iii) are eligible for resale under Rule 144(b)(1) or any successor provision without the requirement for VS PubCo to be in compliance with the current public information requirement under Rule 144 and without volume or manner-of-sale restrictions applicable to the sale or transfer of such Shares. If restrictive legends are no longer required for such Shares pursuant to the foregoing, VS PubCo shall, in accordance with the provisions of this section and within three (3) trading days of any request therefor from the Investor accompanied by such customary and reasonably acceptable representations and other documentation referred to above establishing that restrictive legends are no longer required, deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall make a new, unlegended entry for such book entry Shares. VS PubCo shall be responsible for the fees of its Transfer Agent, its legal counsel and all DTC fees associated with such issuance.

### d. Indemnification.

(i) VS PubCo agrees to indemnify and hold harmless, to the extent permitted by law, the Investor, its directors, officers, employees, investment advisers and agents, and each person who controls the Investor (within the meaning of the Securities Act or the Exchange Act) and each affiliate of the Investor (within the meaning of Rule 405 under the Securities Act) from and against any and all losses, claims, damages, liabilities and expenses (including, without limitation, any reasonable attorneys' fees and expenses incurred in connection with defending or investigating any such action or claim) caused by any untrue or alleged untrue statement of material fact contained in any Registration Statement, prospectus included in any Registration Statement or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information furnished in writing to VS PubCo by or on behalf of the Investor expressly for use therein.

(ii) The Investor agrees, severally and not jointly with any person that is a party to the Other Subscription Agreements or any other selling shareholder under the Registration Statement, to indemnify and hold harmless VS PubCo, its directors and officers and agents and each person who controls VS PubCo (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) resulting from any untrue statement of material fact contained in the Registration Statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by the Investor expressly for use therein. In no event shall the liability of the Investor be greater in amount than the dollar amount of the net proceeds received by the Investor upon the sale of the Shares purchased pursuant to this Subscription Agreement giving rise to such indemnification obligation.

(iii) Any person entitled to indemnification herein shall (1) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person's right to indemnification hereunder to the extent such failure has not prejudiced the indemnifying party) and (2) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent. An indemnifying party who elects not to assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of legal counsel to any indemnified party a conflict of interest exists between such indemnified party and any other of such indemnified parties with respect to such claim. No

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indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

(iv) The indemnification provided for under this Subscription Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, employee, agent, affiliate or controlling person of such indemnified party and shall survive the transfer of the Shares purchased pursuant to this Subscription Agreement.

(v) If the indemnification provided under this Section 7(d) from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth above, any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 7(d) from any person who was not guilty of such fraudulent misrepresentation. In no event shall the liability of the Investor be greater in amount than the dollar amount of the net proceeds received by the Investor upon the sale of the Shares purchased pursuant to this Subscription Agreement giving rise to such contribution obligation.

8. **Termination.** This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) such date and time as the Transaction Agreement is terminated in accordance with its terms without being consummated, (b) upon the mutual written agreement of each of the parties hereto and VS PubCo to terminate this Subscription Agreement, (c) on or after the Agreement End Date (as defined in the Transaction Agreement as the same exists on the date of this Subscription Agreement), if the Closing has not occurred by such date, or (d) if any of the conditions to Closing set forth in Section 3 of this Subscription Agreement are not satisfied or waived, or are not capable of being satisfied, on or prior to the Closing and, as a result thereof, the transactions contemplated by this Subscription Agreement will not be and are not consummated at the Closing (the termination events described in clauses (a)–(d) above, collectively, the “Termination Events”); provided that nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from any such willful breach. Horizon shall notify the Investor in writing of the termination of the Transaction Agreement promptly after the termination of such agreement. Upon the occurrence of any Termination Event, this Subscription Agreement shall be void and of no further effect and any monies paid by the Investor to VS PubCo in connection herewith shall promptly (and in any event within one (1) business day) following the Termination Event be returned to the Investor.

9. **Trust Account Waiver.** The Investor acknowledges that Horizon is a blank check company with the powers and privileges to effect a merger, asset acquisition, reorganization or similar business combination involving Horizon and one or more businesses or assets. The Investor further acknowledges that, as described in

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Horizon's prospectus relating to its initial public offering dated August 20, 2020 (the "Prospectus") available at [www.sec.gov](http://www.sec.gov), substantially all of Horizon's assets consist of the cash proceeds of Horizon's initial public offering and private placement of its securities, and substantially all of those proceeds have been deposited in a trust account (the "Trust Account") for the benefit of Horizon, its public shareholders and the underwriters of Horizon's initial public offering. Except with respect to interest earned on the funds held in the Trust Account that may be released to Horizon to pay its tax obligations, if any, the cash in the Trust Account may be disbursed only for the purposes set forth in the Prospectus. For and in consideration of Horizon entering into this Subscription Agreement, the receipt and sufficiency of which are hereby acknowledged, the Investor hereby irrevocably waives any and all right, title and interest, or any claim of any kind it has or may have in the future, in or to any monies held in the Trust Account, and agrees not to seek recourse against the Trust Account as a result of, or arising out of, this Subscription Agreement; provided, however, that nothing in this Section 9 shall be deemed to limit the Investor's right, title, interest or claim to any monies held in the Trust Account by virtue of its record or beneficial ownership of any Class A Shares, pursuant to a validly exercised redemption right with respect to any such Class A Shares.

### 10. Miscellaneous.

a. Neither this Subscription Agreement nor any rights that may accrue to the Investor hereunder (other than the Shares acquired hereunder, if any) may be transferred or assigned; provided that the Investor may assign its rights and obligations under this Subscription Agreement to one or more of its affiliates (including other investment funds or accounts managed or advised by the investment manager who acts on behalf of the Investor or an affiliate thereof); provided, that no such assignment shall relieve the Investor of its obligations hereunder.

b. Horizon and VS PubCo may request from the Investor such additional information as Horizon and/or VS PubCo may deem necessary to register the resale of the Shares and evaluate the eligibility of the Investor to acquire the Shares, and the Investor shall provide such information as may reasonably be requested, to the extent readily available and to the extent consistent with the Investor's internal policies and procedures; provided that each of Horizon and VS PubCo agrees to keep any such information provided by the Investor confidential except (i) as required by the federal securities law or pursuant to other routine proceedings of regulatory authorities or (ii) to the extent such disclosure is required by law, at the request of the staff of the SEC or regulatory agency or under the regulations of any national securities exchange on which Horizon's or VS PubCo's, as applicable securities are listed for trading. The Investor acknowledges and agrees that if it does not provide VS PubCo with such requested information, VS PubCo may not be able to register the Investor's Shares for resale pursuant to Section 7 hereof. The Investor acknowledges that Horizon and/or VS PubCo may file a form of this Subscription Agreement that does not identify the Investor with the SEC as an exhibit to a periodic report or a registration statement of Horizon and/or VS PubCo.

c. The Investor acknowledges that Horizon and VS PubCo will rely on the acknowledgments, understandings, agreements, representations and warranties contained in Section 6 of this Subscription Agreement. Prior to the Closing, each party hereto agrees to promptly notify the other parties hereto and the Placement Agents if any of their respective acknowledgments, understandings, agreements, representations and warranties set forth in Section 5 or Section 6, as applicable, above are no longer accurate in any material respect (other than those acknowledgments, understandings, agreements, representations and warranties qualified by materiality, in which case such party shall notify the other parties and the Placement Agents if they are no longer accurate in any respect).

d. Horizon, VS PubCo and the Placement Agents (each as a third party beneficiary with right of enforcement as set forth in this Subscription Agreement) are each irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby; provided, however, that the foregoing clause of this Section 10(d) shall not give the Placement Agents any rights other than those expressly set forth herein and,

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without limiting the generality of the foregoing and for the avoidance of doubt, in no event shall the Target be entitled to rely on any of the representations and warranties of Horizon set forth in this Subscription Agreement.

e. The Investor hereby acknowledges and agrees that it will not, nor will any person acting at the Investor's direction or pursuant to any understanding with Investor (including Investor's controlled affiliates), directly or indirectly, offer, sell, pledge, contract to sell, sell any option in, or engage in hedging activities or execute any "short sales" (as defined in Rule 200 of Regulation SHO under the Exchange Act) with respect to, any Shares or any securities of Horizon or any instrument exchangeable for or convertible into any Shares or any securities of Horizon until the consummation of the Transaction (or such earlier termination of this Subscription Agreement in accordance with its terms). For the avoidance of doubt, this Section 10(e) shall not apply to any sale (including the exercise of any redemption right) of securities of Horizon (i) held by the Investor, its controlled affiliates or any person or entity acting on behalf of the Investor or any of its controlled affiliates prior to the execution of this Subscription Agreement or (ii) purchased by the Investor, its controlled affiliates or any person or entity acting on behalf of the Investor or any of its controlled affiliates in open market transactions after the execution of this Subscription Agreement. Notwithstanding the foregoing, (i) nothing herein shall prohibit any entities under common management with the Investor that have no knowledge of this Subscription Agreement or of the Investor's participation in the transactions contemplated hereby (including the Investor's controlled affiliates and/or affiliates) from entering into any short sales; (ii) in the case of an Investor that is a multimanaged investment vehicle whereby separate portfolio managers manage separate portions of such Investor's assets and the portfolio managers have no knowledge of the investment decisions made by the portfolio managers managing other portions of such Investor's assets, this Section 10(e) shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Shares covered by this Subscription Agreement.

f. All of the agreements, representations and warranties made by each party hereto in this Subscription Agreement shall survive the Closing. For the avoidance of doubt, if for any reason the Closing does not occur prior to the consummation of the Transaction, all representations, warranties, covenants and agreements of the parties hereunder shall survive the consummation of the Transaction and remain in full force and effect.

g. This Subscription Agreement may not be modified, waived or terminated (other than pursuant to the terms of Section 8 above) except by an instrument in writing, signed by each of the parties hereto. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

h. This Subscription Agreement (including the schedule hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof. Except as set forth in Section 7(d), Section 10(d), this Section 10(h), the last two sentences of Section 10(l) and Section 11 with respect to the persons specifically referenced therein, this Subscription Agreement shall not confer any rights or remedies upon any person other than the parties hereto, and their respective successor and assigns, and the parties hereto acknowledge that such persons so referenced are third party beneficiaries of this Subscription Agreement with right of enforcement for the purposes of, and to the extent of, the rights granted to them, if any, pursuant to the applicable provisions.

i. Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.

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j. If any provision of this Subscription Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

k. This Subscription Agreement may be executed in one or more counterparts (including by facsimile or electronic mail or in .pdf) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.

l. The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Subscription Agreement, without posting a bond or undertaking and without proof of damages, to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise. The parties hereto acknowledge and agree that the Placement Agents shall be entitled to rely on the provisions of the Subscription Agreement of which the Placement Agents are each an express third party beneficiary, in each case, on the terms and subject to the conditions set forth herein. For the avoidance of doubt, each of the Placement Agents are third party beneficiaries with rights to enforce Section 5, Section 6, Section 10 and Section 11 hereof on their own behalf and not on behalf of Horizon or VS PubCo.

m. If any change in the number, type or classes of authorized shares of VS PubCo (including the Shares), other than as contemplated by the Transaction Agreement or any agreement contemplated by the Transaction Agreement, shall occur between the date hereof and immediately prior to the Closing by reason of reclassification, recapitalization, stock split (including reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend, the number of Shares issued to the Investor and Per Share Purchase Price shall be appropriately adjusted to reflect such change.

n. This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof) as to all matters (including any action, suit, litigation, arbitration, mediation, claim, charge, complaint, inquiry, proceeding, hearing, audit, investigation or reviews by or before any governmental entity related hereto), including matters of validity, construction, effect, performance and remedies.

o. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF THE STATE OF NEW YORK SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SUBSCRIPTION AGREEMENT AND THE DOCUMENTS REFERRED TO IN THIS SUBSCRIPTION AGREEMENT AND IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR INTERPRETATION OR ENFORCEMENT HEREOF OR ANY SUCH DOCUMENT THAT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS OR THAT VENUE THEREOF MAY NOT BE APPROPRIATE OR THAT THIS SUBSCRIPTION AGREEMENT OR ANY SUCH DOCUMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION, SUIT OR PROCEEDING SHALL BE HEARD AND DETERMINED BY SUCH A NEW YORK STATE OR FEDERAL COURT. THE PARTIES HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING IN THE MANNER

PROVIDED IN SECTION 10(p) OF THIS SUBSCRIPTION AGREEMENT OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS SUBSCRIPTION AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (III) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS SUBSCRIPTION AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 10(l).

p. Any notice or communication required or permitted hereunder to be given to the Investor shall be in writing and either delivered personally, emailed or sent by overnight mail via a reputable overnight carrier, or sent by certified or registered mail, postage prepaid, to such address(es) or email address(es) set forth on the signature page hereto, and shall be deemed to be given and received (i) when so delivered personally, (ii) when sent, with no mail undeliverable or other rejection notice, if sent by email, or (iii) three (3) business days after the date of mailing to the address below or to such other address or addresses as the Investor may hereafter designate by notice to Horizon and VS PubCo.

11. Non-Reliance and Exculpation. The Investor acknowledges that it is not relying upon, and has not relied upon, any statement, representation, warranty or other information made or provided by any person, firm or corporation (including, without limitation, the Placement Agents, any of their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing), other than the statements, representations and warranties of Horizon and VS PubCo, as applicable, expressly contained in Section 5 of this Subscription Agreement, in making its investment or decision to invest in VS PubCo. The Investor acknowledges and agrees that, other than the statements, representations and warranties of Horizon and VS PubCo, as applicable, expressly contained in Section 5 of this Subscription Agreement, none of (i) any other investor pursuant to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares (including the investor's respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing) or (ii) the Placement Agents, their respective affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing shall have any liability to the Investor, or to any other investor, pursuant to, arising out of or relating to this Subscription Agreement or any other subscription agreement related to the private placement of the Shares, the negotiation hereof or thereof or its subject matter, or the transactions contemplated hereby or thereby, including, without limitation, with respect to any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Shares or with respect to any claim (whether in tort, contract or otherwise) for breach of this Subscription Agreement or in respect of any written or oral representations made or alleged to be made in connection herewith, as expressly provided herein, or for any actual or alleged inaccuracies, misstatements or omissions with respect to any information or materials of any kind furnished by Horizon, VS PubCo, the Target, the Placement Agents or any Non-Party Affiliate concerning Horizon, VS PubCo, the Target, the Placement Agents, any of their respective controlled affiliates, this Subscription Agreement or the transactions contemplated hereby. For purposes of this Subscription Agreement, "Non-Party Affiliates" means each former, current or future officer, director, employee, partner, member, manager, direct or indirect equityholder or affiliate of Horizon, VS PubCo, the Placement Agents or any of

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Horizon's, VS PubCo's or the Placement Agents' respective controlled affiliates or any family member of the foregoing.

12. Disclosure. Horizon shall, by 9:00 a.m., New York City time, on the first (1st) business day immediately following the date of this Subscription Agreement, issue one or more press releases or file with the SEC a Current Report on Form 8-K (collectively, the "Disclosure Document") disclosing all material terms of the transactions contemplated hereby and by the Other Subscription Agreements, the Sponsor Support Agreement, the Exchange Agreement, the Transaction and any other material, nonpublic information that Horizon has provided to the Investor at any time prior to the filing of the Disclosure Document. Upon the issuance of the Disclosure Document, to the actual knowledge of Horizon, the Investor shall not be in possession of any material, non-public information received from Horizon or any of its officers, directors, or employees or agents, and the Investor shall no longer be subject to any confidentiality or similar obligations under any current agreement, whether written or oral, with Horizon, the Placement Agents or any of their respective affiliates, relating to the transactions contemplated by this Subscription Agreement. Notwithstanding anything in this Subscription Agreement to the contrary, Horizon shall not, without the prior written consent of the Investor, publicly disclose the name of the Investor, its investment advisor or any of their respective affiliates or advisers, or include the name of the Investor, its investment advisor or any of their respective affiliates or advisers (i) in any press release or marketing materials or (ii) in any filing with the SEC or any regulatory agency or trading market, except (A) as required by the federal securities law or pursuant to other routine proceedings of regulatory authorities or (B) to the extent such disclosure is required by law, at the request of the staff of the SEC or regulatory agency or under the regulations of any national securities exchange on which Horizon's and/or VS PubCo's securities are listed for trading, provided, that in the case of this clause (ii), Horizon and/or VS PubCo shall provide Investor with prior written notice (including by e-mail) of such permitted disclosure, and shall reasonably consult with Investor regarding such disclosure.

13. Separate Obligations. For the avoidance of doubt, all obligations of the Investor hereunder are separate and several from the obligations of any Other Investor. The decision of Investor to purchase the Shares pursuant to this Subscription Agreement has been made by Investor independently of any Other Investor or any other investor and independently of any information, materials, statements or opinions as to the business, financial condition or results of operations of Horizon, VS PubCo, Target, or any of their respective subsidiaries which may have been made or given by any Other Investor or by any agent or employee of any Other Investor, and neither Investor nor any of its agents or employees shall have any liability to any Other Investor (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Other Subscription Agreement, and no action taken by Investor or Other Investors pursuant hereto or thereto, shall be deemed to constitute Investor and Other Investor as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that Investor and Other Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Subscription Agreement and the Other Subscription Agreements. The Investor acknowledges that no Other Investor has acted as agent for Investor in connection with making its investment hereunder and no Other Investor will be acting as agent of Investor in connection with monitoring its investment in the Shares or enforcing its rights under this Subscription Agreement. The Investor shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Subscription Agreement, and it shall not be necessary for any Other Investor to be joined as an additional party in any proceeding for such purpose.

14. Massachusetts Business Trust. If Investor is a Massachusetts Business Trust, a copy of the Declaration of Trust of Investor or any affiliate thereof is on file with the Secretary of State of the Commonwealth of Massachusetts and notice is hereby given that the Subscription Agreement is executed on behalf of the trustees of Investor or any affiliate thereof as trustees and not individually and that the obligations of the Subscription Agreement are not binding on any of the trustees, officers or stockholders of Investor or any affiliate thereof individually but are binding only upon Investor or any affiliate thereof and its assets and property.

[SIGNATURE PAGES FOLLOW]

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**IN WITNESS WHEREOF**, the Investor has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date set forth below.

Name of Investor:

State/Country of Formation or Domicile:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name in which Shares are to be registered  
(if different):

Date: \_\_\_\_\_, 2021

Investor's EIN:

Business Address – Street:

Mailing Address – Street (if different):

City, State, Zip:

City, State, Zip:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Telephone No.:

Telephone No.:

Facsimile No.:

Facsimile No.:

Email:

Number of Shares subscribed for:

Aggregate Subscription Amount: \$

Price Per Share: \$10.00

You must pay the Subscription Amount by wire transfer of United States dollars in immediately available funds to the account specified by Horizon in the Closing Notice.



IN WITNESS WHEREOF, Horizon has accepted this Subscription Agreement as of the date set forth below.

HORIZON ACQUISITION CORP.

By: \_\_\_\_\_  
Name:  
Title:

For purpose of notice:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attn: \_\_\_\_\_

VIVID SEATS INC.

By: \_\_\_\_\_  
Name:  
Title:

For purpose of notice:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attn: \_\_\_\_\_

Date: April , 2021

**SCHEDULE A**

**ELIGIBILITY REPRESENTATIONS OF THE INVESTOR**

**1. QUALIFIED INSTITUTIONAL BUYER STATUS**

(Please check the applicable subparagraphs):

- ☐ We are a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act (a “QIB”).

**\*\* OR \*\***

**2. INSTITUTIONAL ACCREDITED INVESTOR STATUS**

(Please check the applicable subparagraphs):

- (i) ☐ We are an “accredited investor” (within the meaning of Rule 501(a) under the Securities Act or an entity in which all of the equity holders are accredited investors within the meaning of Rule 501(a) under the Securities Act), and have marked and initialed the appropriate box on the following page indicating the provision under which we qualify as an “accredited investor.”
- (ii) ☐ We are not a natural person.

Rule 501(a), under the Securities Act, in relevant part, states that an “accredited investor” shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. Investor has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to Investor and under which Investor accordingly qualifies as an “accredited investor.”

- ☐ Any bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;
- ☐ Any broker or dealer pursuant to section 5 of the Securities Exchange Act of 1934, as amended;
- ☐ Any insurance company as defined in Section 2(a)(13) of the Securities Act;
- ☐ Any investment company registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”) or a business development company as defined in section 2(a)(48) of the Investment Company Act;
- ☐ Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958, as amended;
- ☐ Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- ☐ Any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), if (i) the investment decision is made by a plan fiduciary, as defined in section 3(21) of ERISA, which is either a bank, a savings and loan association, an insurance company, or a registered investment adviser, (ii) the employee benefit plan has total assets in excess of \$5,000,000, or (iii) such plan is a self-directed plan, with investment decisions made solely by persons that are “accredited investors”;
- ☐ Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000 or;

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- ☐ Any (i) corporation, limited liability company or partnership, (ii) Massachusetts or similar business trust, or (iii) organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, not formed for the specific purpose of acquiring the securities offered, and with total assets in excess of \$5,000,000;
- ☐ Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- ☐ Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds \$1,000,000. For purposes of calculating a natural person's net worth: (a) the person's primary residence shall not be included as an asset; (b) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding sixty (60) days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;
- ☐ Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- ☐ Any trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Section 230.506(b)(2)(ii) of Regulation D;
- ☐ Any entity in which all of the equity owners are "accredited investors";
- ☐ Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the SEC has designated as qualifying an individual for accredited investor status, such as a General Securities Representative license (Series 7), a Private Securities Offerings Representative license (Series 82) and an Investment Adviser Representative license (Series 65);
- ☐ Any "family office" as defined in Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 which was not formed for the purpose of investing in Vivid Seats Inc., a Delaware corporation ("VS PubCo"), has assets under management in excess of \$5,000,000 and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; or
- ☐ Any "family client," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, of a family office, whose prospective investment in VS PubCo is directed by such family office, and such family office is one (i) with assets under management in excess of \$5,000,000, (ii) that was not formed for the specific purpose of investing in VS PubCo, and (iii) whose prospective investment in VS PubCo is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of such prospective investment.

***This page should be completed by the Investor  
and constitutes a part of the Subscription Agreement.***

**HOYA INTERMEDIATE, LLC**  
**SECOND AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY AGREEMENT**

Dated as of [●], 2021

THE UNITS ISSUED PURSUANT TO THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH UNITS MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR AN EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

CERTAIN UNITS MAY ALSO BE SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SET FORTH HEREIN AND/OR IN A SEPARATE AGREEMENT WITH THE INITIAL HOLDER OF SUCH UNITS. A COPY OF SUCH AGREEMENT MAY BE OBTAINED BY THE HOLDER OF SUCH UNITS UPON WRITTEN REQUEST TO THE COMPANY AND WITHOUT CHARGE.

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**HOYA INTERMEDIATE, LLC**  
**SECOND AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY AGREEMENT**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of Hoya Intermediate, LLC, a Delaware limited liability company (the “Company”), is entered into as of [●], 2021, by and among the Company, Vivid Seats Inc., a Delaware corporation (“Vivid Seats”), and Hoya Topco, LLC, a Delaware limited liability company (“TopCo”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.

WHEREAS, the Certificate was filed with the Office of the Secretary of State of Delaware on February 16, 2016;

WHEREAS, the Amended and Restated Limited Liability Agreement of the Company, was entered into as of June 30, 2017, and subsequently amended by that certain First Amendment, dated as of January 25, 2018 (as so amended, the “Prior Agreement”);

WHEREAS, the Company is party to that certain Transaction Agreement, dated as of April [●], 2021 (the “Transaction Agreement”), by and among Horizon Acquisition Corporation, a Cayman Islands exempted company (“Horizon”), Horizon Sponsor, LLC, a Delaware limited liability company, TopCo, the Company and Vivid Seats, pursuant to which, among other things, (i) the Company entered into a merger with [Hoya Recap Merger Sub LLC] and, in connection with the merger, the Company’s equity interests were recapitalized into Common Units and all unitholders of the Company (other than TopCo and the Crescent Holders) received units in TopCo, (ii) Horizon was merged with and into Vivid Seats, with Vivid Seats remaining as the surviving corporation of the merger, (iii) Vivid Seats will be admitted as a Member of the Company and will contribute funds to the Company in exchange for newly-issued Common Units in the Company, (iv) Vivid Seats will purchase, directly or indirectly, Common Units in the Company from the Crescent Blocker Sellers, (v) Vivid Seats will issue Class B Common Stock and warrants to purchase Class B Common Stock to TopCo, (vi) the Company will issue Warrants to Vivid Seats pursuant to a Warrant Agreement, (vii) the Company will issue Warrants to TopCo pursuant to a Warrant Agreement, (viii) the Company will redeem all Common Units held by the Redeemed Crescent Parties, and (ix) Vivid Seats, the Company and TopCo will enter into a Tax Receivable Agreement (as defined below), pursuant to which Vivid Seats will be obligated to make payments to certain parties related to certain tax benefits realized or deemed realized (clauses (i) through (ix), collectively, the “Transactions”); and

WHEREAS, the parties desire to amend and restate the Prior Agreement as set forth herein to give effect to the Transactions and reflect the admission of Vivid Seats as a Member of the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms used but not otherwise defined herein shall have the following meaning:

“Additional Member” means a Person admitted to the Company as a Member pursuant to Section 8.2 in connection with issuance of Units to such Person in compliance with the terms of this Agreement.

“Adjusted Capital Account Deficit” means, with respect to any Capital Account as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such



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Person's Capital Account balance shall be (i) reduced for any items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6), and (ii) increased for any amount such Person is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Sections 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to Minimum Gain).

"Affiliate" of any Person means any other Person controlled by, controlling or under common control with such Person, and in the case of any Unitholder that is a partnership, limited liability company, corporation or similar entity, any partner, member or stockholder of such Unitholder; *provided*, that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Unitholder. As used in this definition, "control" (including, with its correlative meanings, "controlling," "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

"Agreement" means this Second Amended and Restated Limited Liability Company Agreement, as it may be amended, modified and/or waived from time to time in accordance with the terms hereof.

"Assumed Tax Liability" means, with respect to any Unitholder for any Fiscal Quarter or the portion thereof, an amount, which in the good faith estimation of the Board, equals the product of (a) the amount of taxable income of the Company allocable to such Unitholder in respect of such Fiscal Quarter or portion thereof (which shall include gross or net income allocations of items of Profit or Loss and guaranteed payments for the use of capital), determined (x) without regard to adjustments under Section 732(d), 734(b) and 743(b) of the Code and (y) reducing such taxable income by net taxable losses, deductions or credits of the Company allocated to such Unitholder for prior taxable periods or portions thereof to the extent that such losses, deductions or credits (1) are of a type or character (e.g., in the case of losses, ordinary or capital) that would permit the losses, deductions or credits to be deducted or utilized by such Unitholder against the current taxable income of the Company allocable to the Unitholder for such Fiscal Quarter and (2) have not previously been taken into account in determining such Unitholder's Assumed Tax Liability, multiplied by (b) the Assumed Tax Rate.

"Assumed Tax Rate" means the combined maximum U.S. federal, state, and local income tax rate applicable to a taxable individual or corporation in any jurisdiction in the United States (whichever is higher), including pursuant to Section 1411 of the Code, in each case, taking into account all jurisdictions in which the Company is required to file income tax returns and the relevant apportionment information, in effect for the applicable Fiscal Quarter (taking into account the character of the income and excluding any reductions in rates attributable to Section 199A of the Code). The Assumed Tax Rate shall be the same for all Unitholders, regardless of the actual combined income tax rate of the Unitholder or its direct or indirect owners and the Manager may adjust the Assumed Tax Rate as it reasonably determines is necessary to take into account the effect of any changes in applicable tax law.

"Base Rate" means, as of any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the "prime rate" at large U.S. money center banks.

"Blocker Corporation" has the meaning set forth in Section 9.8.

"Blocker Merger Transaction" has the meaning set forth in Section 9.8.

"Board" has the meaning set forth in Section 5.1(a).

"Book Value" means, with respect to any of the Company property, the Company's adjusted basis for U.S. federal income Tax purposes, adjusted from time to time to reflect the adjustments required or permitted (in the case of permitted adjustments, to the extent the Company makes such permitted adjustments) by Treasury Regulation Sections 1.704-1(b)(2)(iv)(d)-(g).

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“Business Day” means any day other than a Saturday, Sunday or other day on which the banks in New York, New York or San Diego, California are authorized by law to be closed.

“Capital Account” means the capital account maintained for a Unitholder pursuant to Section 3.5 and the other applicable provisions of this Agreement.

“Capital Contributions” means any cash, cash equivalents, promissory obligations or the Fair Market Value of other property (net of any applicable liabilities) which a Unitholder contributes or is deemed by the Board to have contributed to the Company with respect to any Unit pursuant to Section 3.1 or Section 3.10.

“Cash Payment” means, an amount in cash equal to the product of (x) the Redeemed Unit Amount, (y) the then-applicable Exchange Rate, and (z) (i) solely in connection with a Change of Control Redemption, the Common Stock Value, and (ii) with respect to any Redemption that is not a Change of Control Redemption, the price to the public or the private sale price, as applicable, of the Class A Common Stock in the substantially concurrent public offering or private sale, as applicable.

“Certificate” means the Company’s Certificate of Formation as filed with the Secretary of State of Delaware, as the same may be amended from time to time.

“Change of Control” means the occurrence of any of the following events:

(a) any “person” or “group” (within the meaning of Sections 13(d) of the Exchange Act (excluding any “person” or “group” who, as of the date hereof, is the beneficial owner of securities of Vivid Seats representing more than 50% of the combined voting power of Vivid Seats’ then outstanding voting securities)) becomes the beneficial owner of securities of Vivid Seats representing more than 50% of the combined voting power of the Vivid Seats’ then outstanding voting securities;

(b) (A) the shareholders of Vivid Seats approve a plan of complete liquidation or dissolution of Vivid Seats or (B) there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by Vivid Seats of all or substantially all of Vivid Seat’s assets, other than such sale or other disposition by Vivid Seats of all or substantially all of Vivid Seats’ assets to an entity at least 50% of the combined voting power of the voting securities of which are owned by shareholders of Vivid Seats in substantially the same proportions as their ownership of Vivid Seats immediately prior to such sale or other disposition;

(c) there is consummated a merger or consolidation of Vivid Seats with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the board of directors of Vivid Seats 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 consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) all of the Persons who were the respective beneficial owners of the voting securities of Vivid Seats immediately prior to such merger or consolidation do not beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation; or

(d) the following individuals cease for any reason to constitute a majority of the number of directors of Vivid Seats then serving: individuals who were directors of Vivid Seats as of the date hereof or any new director whose appointment or election to the Board or nomination for election by Vivid Seats’ shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors of Vivid Seats on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (d).

Notwithstanding the foregoing, a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and Class B Common Stock of Vivid Seats immediately prior to such

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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 of, an entity which owns all or substantially all of the assets of Vivid Seats immediately following such transaction or series of transactions.

“Change of Control Redemption” has the meaning set forth in Section 9.1(b)(i).

“Change of Control Redemption Date” has the meaning set forth in Section 9.1(b)(iii).

“Class A Common Stock” means the class A common stock, par value \$0.0001 per share, of Vivid Seats.

“Class B Common Stock” means the class B common stock, par value \$0.0001 per share, of Vivid Seats.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Common Stock Value” means, with respect to any Change of Control Redemption, the greater of (x) the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by Bloomberg, L.P., or its successor, for each of the three (3) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the related Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock and (y) the price per share of Class A Common Stock offered by the Person or group that is the acquirer in the applicable Change of Control transaction. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then the Common Stock Value shall be determined in good faith by a majority of the directors of Vivid Seats that do not have an interest in the Redeemable Units subject to Redemption (or the corresponding shares of Class B Common Stock).

“Common Unit” means a Unit having the rights and obligation specified with respect to a Common Unit in this Agreement.

“Company” has the meaning set forth in the Preamble.

“Contribution Notice” has the meaning set forth in Section 9.1(a)(iv).

“Crescent Blocker Sellers” means Crescent Mezzanine Partners VIB, L.P., Crescent Mezzanine Partners VIC, L.P., NPS/Crescent Strategic Partnership II, LP, CM7C VS Equity Holdings, LP and Crescent Mezzanine Partners VIIB, L.P.

“Crescent Holders” means the Redeemed Crescent Parties, CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7C VS Equity, LLC and CM7B VS Equity, LLC.

“Delaware Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as it may be amended from time to time, and any successor thereto.

“Direct Exchange” has the meaning set forth in Section 9.1(f).

“Distribution” means each distribution made by the Company to a Unitholder, with respect to such Person’s Units, whether in cash, property or securities and whether by liquidating distribution, redemption, repurchase or otherwise; *provided* that notwithstanding anything in the foregoing, none of the following shall be deemed to be a Distribution hereunder: (i) any recapitalization, exchange or conversion of securities of the Company, and any subdivision (by unit split or otherwise) or any combination (by reverse unit split or otherwise) of any outstanding Units; and (ii) any repurchase of Units pursuant to any right of first refusal or similar repurchase right in favor of the Company.

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“Equity Agreement” has the meaning set forth in Section 3.2(a).

“Equity Securities” means (i) any Units, capital stock, partnership, membership or limited liability company interests or other equity interests (including other classes, groups or series thereof having such relative rights, powers and/or obligations as may from time to time be established by the Board, including rights, powers and/or duties different from, senior to or more favorable than existing classes, groups and series of Units, capital stock, partnership, membership or limited liability company interests or other equity interests, and including any profits interests), (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units, capital stock, partnership interests, membership or limited liability company interests or other equity interests, and (iii) warrants, options or other rights to purchase or otherwise acquire Units, capital stock, partnership interests, membership or limited liability company interests or other equity interests. Unless the context otherwise indicates, the term “Equity Securities” refers to Equity Securities of the Company.

“Event of Withdrawal” means the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Exchange Act shall be deemed to include any corresponding provisions of future law.

“Exchange Election Notice” has the meaning set forth in Section 9.1(f).

“Exchange Rate” means the number of shares of Class A Common Stock for which one Common Unit may be redeemed pursuant to a Redemption. The Exchange Rate will also be used to determine the number of shares of Class B Common Stock that a Member must surrender upon a Redemption or Direct Exchange. On the date of this Agreement, the Exchange Rate shall be 1.00, subject to adjustment pursuant to Section 9.2.

“Fair Market Value” means, as of any date of determination, (i) with respect to a Unit, such Unit’s Pro Rata Share as of such date, (ii) with respect to a share of Class A Common Stock, the Common Stock Value as of such date, and (iii) with respect to any other non-cash assets, the fair market value for such property as between a willing buyer under no compulsion to buy and a willing seller under no compulsion to sell in an arm’s-length transaction occurring on such date, taking into account all relevant factors determinative of value (including in the case of securities, any restrictions on transfer applicable thereto or, if such securities are traded on a securities exchange or automated or electronic quotation system, the quoted price for such securities as of the date of determination), as reasonably determined in good faith by the Board.

“First Redemption Time” means the expiration or earlier waiver of any lockup agreement in connection with the Transactions, including the Stockholders’ Agreement.

“Fiscal Period” means any interim accounting period within a Taxable Year established by the Board and which is permitted or required by Code Section 706.

“Fiscal Quarter” means each calendar quarter ending March 31, June 30, September 30 and December 31, or such other quarterly accounting period as may be established by the Board or as required by the Code.

“Fiscal Year” means the 12-month period ending on December 31, or such other annual accounting period as may be established by the Board or as may be required by the Code.

“Governmental Entity” means the United States of America or any other nation, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

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“[Horizon](#)” has the meaning set forth in the Recitals.

“[HSR Act](#)” has the meaning set forth in [Section 11.7](#).

“[Indemnitee](#)” has the meaning set forth in [Section 6.2](#).

“[Investment Company Act](#)” means the Investment Company Act of 1940, as amended from time to time.

“[Liens](#)” means any and all liens, charges, security interests, options, claims, mortgages, pledges, proxies, voting trusts or agreements, obligations, understandings or arrangements, or other restrictions on title or transfer of any nature whatsoever.

“[Liquidation Assets](#)” has the meaning set forth in [Section 11.2\(b\)](#).

“[Liquidation FMV](#)” has the meaning set forth in [Section 11.2\(b\)](#).

“[Liquidation Statement](#)” has the meaning set forth in [Section 11.2\(b\)](#).

“[Losses](#)” means items of the Company loss and deduction determined according to [Section 3.5](#).

“[Manager](#)” has the meaning set forth in [Section 5.1\(a\)](#).

“[Member](#)” means each Person listed on the Unit Ownership Ledger and any Person admitted to the Company as a Substituted Member or Additional Member in accordance with the terms and conditions of this Agreement, each in its capacity as a member of the Company; but in each case only for so long as such Person is shown on the Unit Ownership Ledger as the owner of one or more Units.

“[Minimum Gain](#)” means the partnership minimum gain determined pursuant to Treasury Regulation Section 1.704-2(d).

“[Obligations](#)” has the meaning set forth in [Section 6.2](#).

“[Partnership Tax Audit Rules](#)” means Code Sections 6221 through 6241 together with any guidance issued thereunder or successor provisions and any similar provision of state or local Tax laws.

“[Permitted Transferee](#)” means, with respect to any Person, (i) any of such Person’s Affiliates and (ii) any direct or indirect partner, member, stockholder or other equityholder of such Person.

“[Person](#)” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, association or other entity or a Governmental Entity.

“[PR](#)” has the meaning set forth in [Section 7.4\(a\)](#).

“[Pro Rata Share](#)” means with respect to each Unitholder, the proportionate amount such Unitholder would receive if an amount equal to the Total Equity Value were distributed to all Unitholders in accordance with [Section 4.1\(b\)](#), as determined in good faith by the Board.

“[Profits](#)” means items of the Company income and gain determined according to [Section 3.5](#).

“[Prior Agreement](#)” has the meaning set forth in the Recitals.

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“Redeemed Crescent Parties” means Crescent Mezzanine Partners VI, L.P., Crescent Mezzanine Partners VII, L.P., Crescent Mezzanine Partners VII (LTL), L.P. and CBDC Universal Equity, Inc.

“Redemption” has the meaning set forth in Section 9.1(a)(i).

“Redemption Date” has the meaning set forth in Section 9.1(a)(iii).

“Redemption Notice” has the meaning set forth in Section 9.1(a)(iii).

“Redeemable Unit” means a Common Unit held by a Member (other than Vivid Seats and its Subsidiaries).

“Redeemed Unit Amount” means, with respect to a Redemption, the number of Common Units set forth in the applicable Redemption Notice.

“Registration Rights Agreement” means that certain Registration Rights Agreement, dated as of November 19, 2020, by and among Vivid Seats and certain other parties thereto, as the same may be amended, amended and restated or replaced from time to time.

“Regulatory Allocations” has the meaning set forth in Section 4.3(e).

“Retraction Notice” has the meaning set forth in Section 9.1(a)(vi).

“Securities Act” means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

“Stockholders’ Agreement” means that certain Stockholders’ Agreement, dated as of [●], 2021, by and among Vivid Seats and the investors party thereto, as the same may be amended, amended and restated or replaced from time to time.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof and without limitation, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the manager, managing member, managing director (or a board comprised of any of the foregoing) or general partner of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a “Subsidiary” of any Person shall be given effect only at such times that such Person has one or more Subsidiaries, and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“Substituted Member” means a Person that is admitted as a Member to the Company pursuant to Section 8.2 in connection with the Transfer of Units to such Person permitted under the terms of this Agreement.

“Takeover Laws” means any “moratorium,” “control share acquisition,” “business combination,” “fair price” or other form of anti-takeover laws and regulations of any jurisdiction that may purport to be applicable to this Agreement or the transactions contemplated hereby, including any Redemption or Direct Exchange.

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“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, and any interest, penalties or additions to tax or additional amounts in respect of the foregoing.

“Tax Distribution” has the meaning set forth in Section 4.1(a)(i).

“Tax Distribution Conditions” has the meaning set forth in Section 4.1(a)(i).

“Tax Receivable Agreement” means the Tax Receivable Agreement dated as of [●], 2021, by and among Vivid Seats, the Company and Topco, as the same may be amended, amended and restated or replaced from time to time.

“Taxable Year” means the Company’s accounting period for U.S. federal income Tax purposes determined pursuant to Section 7.3.

“TopCo” has the meaning set forth in the Preamble.

“Topco Manager” has the meaning set forth in Section 5.1(b)(ii).

“Total Equity Value” means, as of any date of determination, the aggregate proceeds which would be received by the Unitholders if: (i) the assets of the Company were sold at their fair market value to an independent third-party on arm’s-length terms, with neither the seller nor the buyer being under compulsion to buy or sell such assets; (ii) the Company satisfied and paid in full all of its obligations and liabilities (including all Taxes, costs and expenses incurred in connection with such transaction and any amounts reserved by the Board with respect to any contingent or other liabilities); and (iii) such net sale proceeds were then distributed in accordance with Section 4.1, all as determined by the Board in good faith based upon the Common Stock Value as of such date.

“Trading Day” means a day on which the principal U.S. securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“Transaction Agreement” has the meaning set forth in the Recitals.

“Transaction Documents” means, collectively, this Agreement, the Registration Rights Agreement and the Tax Receivable Agreement.

“Transactions” has the meaning set forth in the Recitals.

“Transfer” has the meaning set forth in Section 8.1.

“Treasury Regulations” means the income Tax regulations promulgated under the Code and effective as of the date of this Agreement. Such term, if elected by the Board in its sole discretion, shall be deemed to include any future amendments to such regulations and any corresponding provisions of succeeding regulations (whether or not such amendments and corresponding provisions are mandatory or discretionary).

“Unit” means a limited liability company interest in the Company of a Member or representing a fractional part of the interests in Profits, Losses and Distributions of the Company held by all Members, including Common Units.

“Unit Ownership Ledger” has the meaning set forth in Section 3.1(b).

“Unitholder” means any owner of one or more Units as reflected on the Company’s books and records.

“Upstairs Class A Warrants” has the meaning set forth in Section 3.13(b).

“Upstairs Class B Warrants” has the meaning set forth in Section 3.13(c).

“Vivid Seats” has the meaning set forth in the Preamble.

“Vivid Seats Manager” has the meaning set forth in Section 5.1(b)(i).

“Warrant Agreements” has the meaning set forth in Section 3.13(a).

“Warrants” has the meaning set forth in Section 3.13(a).

## ARTICLE II ORGANIZATIONAL MATTERS

Section 2.1 **Formation of LLC; Continuation.** The Company was formed in the State of Delaware on February 16, 2016 pursuant to the provisions of the Delaware Act. Each Person listed on the Unit Ownership Ledger as a member of the Company on the date hereof is hereby admitted as (or shall continue as) a member of the Company.

Section 2.2 **Limited Liability Company Agreement.** The Members hereby execute this Agreement for the purpose of amending and restating the Prior Agreement and establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Delaware Act. The Members hereby agree that until the Company is terminated in accordance with Section 11.4, the rights, powers and obligations of the Unitholders with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act; *provided that*, notwithstanding the foregoing and anything else to the contrary, Section 18-210 of the Delaware Act (entitled “No Statutory Appraisal Rights”) shall not apply to or be incorporated into this Agreement and each Unitholder hereby expressly waives any and all rights under such Section of the Delaware Act and, to the fullest extent permitted by law, Section 18-305(a) of the Delaware Act (entitled “Access to and Confidentiality of Information; Records”) shall not apply to or be incorporated into this Agreement and each Member hereby expressly waives any and all rights under such Section of the Delaware Act. For the avoidance of doubt, the foregoing waiver of any and all rights by each Member under Section 18-305(a) of the Delaware Act is a restriction of the Members’ rights to obtain information, approved and adopted by all of the Members, as permitted under Section 18-305(g) of the Delaware Act.

Section 2.3 **Name.** The name of the Company shall be “Hoya Intermediate, LLC.” The Board may change the name of the Company at any time and from time to time. Notification of any such name change shall be given to all Unitholders. The Company’s business may be conducted under its name and/or any other name or names deemed advisable by the Board.

Section 2.4 **Purpose.** The purpose and business of the Company shall be to manage and direct the business operations and affairs of the Company and its Subsidiaries and to engage in any other lawful acts or activities for which limited liability companies may be formed under the Delaware Act.

Section 2.5 **Principal Office; Registered Office.** The principal office of the Company shall be located at such place inside or outside the state of Delaware as the Board may from time to time designate, and, to the fullest extent permitted by law, all business and activities of the Company shall be deemed to have occurred at its



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principal office. The Company may maintain offices at such other place or places as the Board deems advisable. The address of the registered office of the Company in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by applicable law, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be the registered agent named in the Certificate or such Person or Persons as the Board may designate from time to time in the manner provided by applicable law.

Section 2.6 **Term**. The term of the Company commenced upon the filing of the Certificate with the office of the Secretary of State of the State of Delaware in accordance with the Delaware Act and shall continue in existence until the Company shall be dissolved in accordance with the provisions of Article XI. The existence of the Company as a separate entity shall continue until the cancellation of the Certificate in accordance with Section 11.4.

Section 2.7 **No State-Law Partnership**. The Unitholders intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Unitholder be a partner or joint venturer of any other Unitholder by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.7, and neither this Agreement nor any other document entered into by the Company or any Unitholder relating to the subject matter hereof shall be construed to suggest otherwise. The Unitholders intend that the Company shall be treated as a partnership for U.S. federal and, if applicable, state or local income Tax purposes, and that each Unitholder and the Company shall file all Tax returns and shall otherwise take all Tax and financial reporting positions in a manner consistent with such treatment.

Section 2.8 **Ratification and Specific Authorization of Transactions**. Pursuant to the Transaction Agreement, the Company has undertaken or will undertake the Transactions. In connection therewith, (i) all actions taken to date, and any and all things done, by the Company, and by the Board or any officer, employee or agent of the Company on behalf of the Company, in furtherance of and consistent with the Transactions (including, without limitation, the execution and delivery of the Transaction Agreement and the recapitalization of the Company's equity interests into Common Units), are hereby in all respects confirmed to be authorized, approved and ratified and, to the extent not yet undertaken, (ii) the Company, and the Board or any officer, employee or agent of the Company on behalf of the Company, is hereby authorized to (y) enter into and perform the Warrant Agreement, the Tax Receivable Agreement and any documents contemplated thereby or related thereto and any amendments thereto and (z) redeem any Common Units held by the Redeemed Crescent Parties, in each case, without any further act, vote or approval of any Person, including any Member or any Unitholder, notwithstanding any other provision of this Agreement.

## **ARTICLE III UNITS, CAPITAL CONTRIBUTIONS AND ACCOUNTS**

### **Section 3.1 Units; Capitalization**

(a) **Units; Capitalization**. The Company shall have the authority to issue an unlimited number of Common Units. In connection with the Transactions and subject to the terms and conditions of the Transaction Agreement, the Company will issue Common Units and Warrants to Vivid Seats in exchange for a cash contribution to the Company, such that immediately after completion of the Transactions and the issuance of Common Units and Warrants by the Company, the total number of Common Units held by Vivid Seats will equal the total number of outstanding shares of Class A Common Stock and the total number of Common Units into which Warrants held by Vivid Seats are exercisable will be equal to the total number of shares of Class A Common Stock for which outstanding warrants issued by Vivid Seats are exercisable. The ownership by a Member of Common Units shall entitle such Member to allocations of Profits and Losses and other items and Distributions of cash and other property as set forth in Article IV hereof.

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(b) Unit Ownership Ledger; Capital Contributions. The Board shall create and maintain a ledger (the “Unit Ownership Ledger”) setting forth the name and address of each Unitholder and holder of Warrants, the number of each class of Units and Warrants held of record by each such Unitholder and holder of Warrants, and the amount of the Capital Contribution made (or deemed to have been made) with respect to each class of Units and the date of such Capital Contribution. Upon any change in the number or ownership of outstanding Units or Warrants (whether upon an issuance of Units or Warrants, a Transfer of Units or Warrants, a cancellation of Units or Warrants or otherwise), the Board shall amend and update the Unit Ownership Ledger. Absent manifest error, the ownership interests recorded on the Unit Ownership Ledger shall be conclusive record of the Units and Warrants that have been issued and are outstanding. Each Unitholder named in the Unit Ownership Ledger has made (or shall be deemed to have made) Capital Contributions to the Company as set forth in the Unit Ownership Ledger in exchange for the Units specified in the Unit Ownership Ledger. Any reference in this Agreement to the Unit Ownership Ledger shall be deemed a reference to the Unit Ownership Ledger as amended and in effect from time to time.

(c) Certificates; Legends. Units shall be issued in uncertificated form; *provided that*, at the request of any Member, the Board may cause the Company to issue one or more certificates to any such Member holding Units representing in the aggregate the Units held by such Member. If any certificate representing Units is issued, then such certificate shall bear a legend substantially in the following form:

THIS CERTIFICATE EVIDENCES UNITS REPRESENTING A LIMITED LIABILITY COMPANY INTEREST IN HOYA INTERMEDIATE, LLC. THE LIMITED LIABILITY COMPANY INTEREST IN HOYA INTERMEDIATE, LLC REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, OR ANY NON-U.S. OR STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THE LIMITED LIABILITY COMPANY INTEREST IN HOYA INTERMEDIATE, LLC REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN THE SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF HOYA INTERMEDIATE, LLC, DATED AS OF [●], 2021, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH SHALL BE FURNISHED BY THE COMPANY TO THE RECORD HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.

(d) Prior Common Units. The Common Units that were issued and outstanding and held by the Members prior to the date of this Agreement shall remain unchanged.

### Section 3.2 Authorization and Issuance of Additional Units.

(a) The Board shall have the right to cause the Company to issue and/or create and issue at any time after the date hereof, and for such amount and form of consideration as the Board may determine, additional Units or other Equity Securities of the Company (including creating classes or series thereof having such powers, designations, preferences and rights, which in each case may be senior to existing Units or other Equity Securities of the Company or classes or series thereof, as may be determined by the Board). The Board shall have the power, without the approval of any other Member or Unitholder or any other Person and notwithstanding any other provision of this Agreement, including Section 12.2, to make such amendments to this Agreement in order to provide for such powers, designations, preferences and rights as the Board in its discretion deems necessary or appropriate to give effect to such additional authorization or issuance in accordance with the provisions of this Section 3.2(a). In connection with any issuance of Units (whether on or after the date of this Agreement), the Person who acquires such Units shall execute a counterpart to this Agreement accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents, instruments and agreements to effect such purchase as are required by the Board (including such documents, instruments and agreements entered into on or prior to the date of this Agreement by the Members, each, an “Equity Agreement”).

(b) At any time Vivid Seats issues one or more shares of Class A Common Stock (other than an issuance of the type covered by [Section 3.2\(c\)](#) or an issuance to a holder of Redeemable Units pursuant to [Article IX](#)), Vivid Seats shall contribute to the Company all of the net proceeds (if any) received by Vivid Seats with respect to such share or shares of Class A Common Stock. Upon the contribution by Vivid Seats to the Company of all of such net proceeds so received by Vivid Seats, the Board shall cause the Company to issue a number of Common Units determined based upon the Exchange Rate then in effect, registered in the name of Vivid Seats; *provided, however*, that if Vivid Seats issues one or more shares of Class A Common Stock, some or all of the net proceeds of which are to be used to fund expenses or other obligations of Vivid Seats for which Vivid Seats would be permitted a Distribution pursuant to [Article IV](#), then Vivid Seats shall not be required to transfer such net proceeds to the Company which are used or will be used to fund such expenses or obligations; *provided further*, if Vivid Seats issues any shares of Class A Common Stock in order to purchase or fund the purchase of Common Units from a Member (other than a Subsidiary of Vivid Seats), then the Company shall not issue any new Common Units registered in the name of Vivid Seats in accordance with [Section 9.1\(a\)](#) and Vivid Seats shall not be required to transfer such net proceeds to the Company (it being understood that such net proceeds shall instead be transferred by Vivid Seats to such other Member as consideration for such purchase). Notwithstanding the foregoing, this [Section 3.2\(b\)](#) shall not apply to the issuance and distribution to holders of shares of Class A Common Stock of rights to purchase Equity Securities of Vivid Seats under a “poison pill” or similar shareholder’s rights plan (it being understood that (i) upon exchange of Redeemable Units for Class A Common Stock pursuant to [Article IX](#), such Class A Common Stock would be issued together with any such corresponding right and (ii) in the event such rights to purchase Equity Securities of Vivid Seats are triggered, Vivid Seats will ensure that the holders of Common Units that have not been Exchanged prior to such time will be treated equitably vis-à-vis the holders of Class A Common Stock under such plan).

(c) At any time Vivid Seats issues one or more shares of Class A Common Stock in connection with an equity incentive program, whether such share or shares are issued upon exercise (including cashless exercise) of an option, settlement of a restricted stock unit, as restricted stock or otherwise, the Board shall cause the Company to issue a corresponding number of Common Units, registered in the name of Vivid Seats (determined based upon the Exchange Rate then in effect); *provided* that Vivid Seats shall be required to contribute all (but not less than all) of the net proceeds (if any) received by Vivid Seats from or otherwise in connection with such issuance of one or more shares of Class A Common Stock, including the exercise price of any option exercised, to the Company. If any such shares of Class A Common Stock so issued by Vivid Seats in connection with an equity incentive program are subject to vesting or forfeiture provisions, then the Common Units that are issued by the Company to Vivid Seats in connection therewith in accordance with the preceding provisions of this [Section 3.2\(c\)](#) shall be subject to vesting or forfeiture on the same basis; if any of such shares of Class A Common Stock vest or are forfeited, then a corresponding number of the Common Units (determined based upon the Exchange Rate then in effect) issued by the Company in accordance with the preceding provisions of this [Section 3.2\(c\)](#) shall automatically vest or be forfeited. Any cash or property held by Vivid Seats or the Company or on any of such Person’s behalf in respect of dividends paid on restricted shares of Class A Common Stock that fail to vest shall be returned to the Company upon the forfeiture of such restricted shares of Class A Common Stock.

(d) For purposes of this [Section 3.2](#), “net proceeds” means gross proceeds to Vivid Seats from the issuance of Class A Common Stock or other securities less all reasonable *bona fide* out-of-pocket fees and expenses of Vivid Seats, the Company and their respective Subsidiaries actually incurred in connection with such issuance.

**Section 3.3 Repurchase or Redemption of Class A Common Stock.** If, at any time, any shares of Class A Common Stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by Vivid Seats for cash, then the Board shall cause the Company, immediately prior to such repurchase or redemption of such shares, to redeem a corresponding number of Common Units held by Vivid Seats (determined based upon the Exchange Rate then in effect), at an aggregate redemption price equal to the aggregate purchase or redemption price of the share or shares of Class A Common Stock being repurchased or redeemed by Vivid Seats (plus any reasonable expenses related thereto) and upon such other

terms as are the same for the share or shares of Class A Common Stock being repurchased or redeemed by Vivid Seats.

Section 3.4 **Changes in Common Stock**. In addition to any other adjustments required hereby any subdivision (by stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of Class A Common Stock, Class B Common Stock or other capital stock of Vivid Seats shall be accompanied by an identical subdivision or combination, as applicable, of the Common Units or other Equity Securities, as applicable. In connection with a subdivision or combination of the Common Units or other Equity Securities pursuant to this [Section 3.4](#), the Board shall have the power, without the approval of any other Member or Unitholder or any other Person, to make such amendments to this Agreement in order to reflect such subdivision or combination, as applicable, of the Common Units or other Equity Securities.

Section 3.5 **Capital Accounts**.

(a) **Maintenance of Capital Accounts**. The Company shall maintain a separate Capital Account for each Unitholder according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the sole discretion of the Board), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulation Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of the Company property. Without limiting the foregoing, each Unitholder's Capital Account shall be adjusted, without duplication:

- (i) by adding any additional Capital Contributions made by such Unitholder in consideration for the issuance of Units;
- (ii) by deducting any amounts paid to such Unitholder in connection with the redemption or other repurchase by the Company of Units;
- (iii) by adding any Profits allocated in favor of such Unitholder and subtracting any Losses allocated in favor of such Unitholder; and
- (iv) by deducting any distributions paid in cash or other assets to such Unitholder by the Company.

(b) **Computation of Income, Gain, Loss and Deduction Items**. For purposes of computing the amount of any item of the Company income, gain, loss or deduction to be allocated pursuant to [Article IV](#) and to be reflected in the Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income Tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); *provided that*:

(i) the computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(1)(B), Code Section 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for U.S. federal income Tax purposes;

(ii) if the Book Value of any Company property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property;

(iii) items of income, gain, loss or deduction attributable to the disposition of the Company property having a Book Value that differs from its adjusted basis for Tax purposes shall be computed by reference to the Book Value of such property;

(iv) items of depreciation, amortization and other cost recovery deductions with respect to the Company property having a Book Value that differs from its adjusted basis for Tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g);

(v) to the extent an adjustment to the adjusted Tax basis of any of the Company's asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis); and (vi) this [Section 3.5](#) shall be applied in a manner consistent with the principles of Treasury Regulation Sections 1.704-1(b)(2)(iv)(d), (f)(1), (h)(2) and (s).

**Section 3.6 Negative Capital Accounts; No Interest Regarding Positive Capital Accounts.** No Unitholder shall be required to pay to any other Unitholder or the Company any deficit or negative balance which may exist from time to time in such Unitholder's Capital Account (including upon and after dissolution of the Company). Except as otherwise expressly provided herein, no Unitholder shall be entitled to receive interest from the Company in respect of any positive balance in its Capital Account, and no Unitholder shall be liable to pay interest to the Company or any Unitholder in respect of any negative balance in its Capital Account.

**Section 3.7 No Withdrawal.** No Person shall be entitled to withdraw any part of such Person's Capital Contributions or Capital Account or to receive any Distribution from the Company, except as expressly provided herein.

**Section 3.8 Loans From Unitholders.** Loans by Unitholders to the Company shall not be considered Capital Contributions. If any Unitholder shall loan funds to the Company in excess of the amounts required hereunder to be contributed by such Unitholder to the capital of the Company, the making of such loans shall not result in any increase in the amount of the Capital Account of such Unitholder. The amount of any such loans shall be a debt of the Company to such Unitholder and shall be payable or collectible in accordance with the terms and conditions upon which such loans are made.

**Section 3.9 Adjustments to Capital Accounts for Distributions In-Kind.** To the extent that the Company distributes property in-kind to the Members, the Company shall be treated as making a distribution equal to the Fair Market Value of such property (as of the date of such distribution) for purposes of [Section 4.1](#) and such property shall be treated as if it were sold for an amount equal to its Fair Market Value and any resulting gain or loss shall be allocated to the Members' Capital Accounts in accordance with [Section 4.2](#) through [Section 4.4](#).

**Section 3.10 Transfer of Capital Accounts.** The original Capital Account established for each Substituted Member shall be in the same amount as the Capital Account of the Member (or portion thereof) to which such Substituted Member succeeds at the time such Substituted Member is admitted to as a Member of the Company. The Capital Account of any Member whose interest in the Company shall be increased or decreased by means of (a) the Transfer to it of all or part of the Units of another Member or (b) the repurchase or forfeiture of Units pursuant to any Equity Agreement shall be appropriately adjusted to reflect such Transfer, repurchase or forfeiture. Any reference in this Agreement to a Capital Contribution of or Distribution to a Member that has succeeded any other Member shall include any Capital Contributions or Distributions previously made by or to the former Member on account of the Units of such former Member Transferred to such Member.

**Section 3.11 Adjustments to Book Value.** The Company shall adjust the Book Value of its assets to Fair Market Value in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) as of the following times: (a) at the Board's discretion in connection with the issuance of Units in the Company in exchange for more than a de minimis Capital Contribution or for services performed on behalf of the Company; (b) at the Board's discretion in connection with the Distribution by the Company to a Member of more than a de minimis amount of the Company's assets, including money; (c) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and (d) at such other times as the Board determines necessary or appropriate in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2. Any such increase or decrease in Book Value of an asset shall be allocated as a Profit or Loss to the Capital Accounts of the Members

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under [Section 4.2](#) (determined immediately prior to the event giving rise to the revaluation). For the avoidance of doubt, notwithstanding anything to the contrary contained in this Agreement, the Company shall adjust the Book Value of its assets to Fair Market Value as of the date of the Transactions in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f).

Section 3.12 **Compliance With Section 1.704-1(b)**. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event the Board shall determine that it is prudent to modify the manner in which the Capital Accounts are computed in order to comply with such Treasury Regulations, the Board may make such modification, without the approval of any other Member or Unitholder or any other Person and notwithstanding anything in [Section 12.2](#) to the contrary. The Board also shall (a) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of the Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(iv)(g), and (b) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

### Section 3.13 **Warrants**.

(a) On the date hereof, in connection with the transactions contemplated by the Transaction Agreement, the Company has issued warrants to purchase Common Units (the "[Warrants](#)") to Vivid Seats and TopCo as set forth on the Unit Ownership Ledger pursuant to warrant agreements (the "[Warrant Agreements](#)") entered into between the Company, on the one hand, and Vivid Seats and Topco, as applicable, on the other hand, as of the date hereof. Upon the valid exercise of a Warrant in accordance with the applicable Warrant Agreement, the Company shall issue to Vivid Seats or TopCo, as applicable, the number of Common Units, free and clear of all Liens (other than those arising under applicable securities laws and this Agreement), to be issued in connection with such exercise.

(b) If any holder of a warrant issued by Vivid Seats to purchase shares of Class A Common Stock (the "[Upstairs Class A Warrants](#)") exercises an Upstairs Class A Warrant, then Vivid Seats agrees that it shall cause a corresponding exercise (including by effecting such exercise in the same manner, i.e., by payment of a cash exercise price or on a cashless basis) of a Warrant with similar terms held by it, such that the number of shares of Class A Common Stock issued in connection with the exercise of such Upstairs Class A Warrant shall match with a corresponding number of Common Units issued by the Company pursuant to the Warrant Agreement with Vivid Seats, and the exercise price paid by Vivid Seats shall be equal to the exercise price paid by the holder of the Upstairs Class A Warrant exercising such Upstairs Class A Warrant. Vivid Seats agrees that it will not exercise any Warrants other than in connection with the corresponding exercise of an Upstairs Class A Warrant. In the event an Upstairs Class A Warrant is redeemed, the Company will redeem a Warrant with similar terms held by Vivid Seats.

(c) If Topco exercises a Warrant, then TopCo agrees that it shall cause a corresponding exercise of a warrant issued by Vivid Seats to purchase shares of Class B Common Stock (the "[Upstairs Class B Warrants](#)") held by it, such that the number of Common Units issued by the Company pursuant to the Warrant Agreement with TopCo shall match a corresponding number of shares of Class B Common Stock issued in connection with the exercise of such Upstairs Class B Warrant. TopCo agrees that it will not exercise any Upstairs Class B Warrants other than in connection with the corresponding exercise of a Warrant. In the event a Warrant held by Topco is redeemed, Vivid Seats will redeem an Upstairs Class B Warrant held by Topco.

**ARTICLE IV  
DISTRIBUTIONS AND ALLOCATIONS**

**Section 4.1 Distributions.**

**(a) Tax Distributions.**

(i) Tax Distributions. To the extent funds of the Company are legally available for distribution by the Company and such distribution would not be prohibited under any credit facility or any other agreement to which the Company or any of its Subsidiaries is a party, in each case, as determined by Vivid Seats in its reasonable discretion (the “Tax Distribution Conditions”), with respect to each Fiscal Quarter (or portion thereof), the Company shall distribute to each Unitholder, an amount of cash (each a “Tax Distribution”) that is at least equal to such Unitholder’s Assumed Tax Liability for such Fiscal Quarter (or portion thereof). All Tax Distributions shall be made *pro rata* on a per-Common Unit basis in an amount such that the Unitholder with the highest Assumed Tax Liability per Common Unit receives an amount equal to such Unitholder’s Assumed Tax Liability, on a quarterly basis at least five (5) days prior to the date on which any estimated tax payments are due with respect to the relevant Fiscal Quarter, in order to permit each Unitholder (or the beneficial owners of any Unitholder) to timely pay its estimated tax obligations for the applicable Fiscal Quarter (or portion thereof). The Board shall make, in its reasonable discretion, equitable adjustments (downward (but not below zero) or upward) to each Unitholder’s Tax Distributions (but in any event *pro rata* in proportion to each Unitholder’s respective number of Common Units) to take into account increases or decreases in the number of Common Units held by each Unitholder during the relevant period. All Tax Distributions shall be treated for all purposes under this Agreement as advances against, and shall offset and reduce dollar-for-dollar, subsequent Distributions under Section 4.1(b) or Section 11.2. In determining the amount of any Tax Distributions, (i) the Assumed Tax Liability of Vivid Seats shall be increased if, and solely to the extent, necessary to allow Vivid Seats to satisfy its own tax obligations for the applicable Fiscal Quarter or portion thereof and payments currently due and owing under the Tax Receivable Agreement, taking into account any Distributions previously made to Vivid Seats under this Agreement and (ii) the Assumed Tax Liability of TopCo shall be increased if, and solely to the extent, necessary to allow TopCo to make payments to any of its members that are allocated taxable income in respect of their indirect interests in the Company attributable to an applicable Fiscal Quarter, without regard to whether taxable income of the Company is allocated to TopCo with respect to such Fiscal Quarter.

(ii) To the extent a Unitholder would receive for any Fiscal Quarter less than its per-Common Unit share of the aggregate Tax Distributions to be paid pursuant to Section 4.1(a)(i), the Tax Distributions to such Unitholder shall be increased to ensure that all Tax Distributions to holders of Common Units are made in accordance with their per-Common Unit share. The Board shall be entitled to adjust subsequent Tax Distributions up or down to reflect any variation between its prior estimation of quarterly Tax Distributions that would have been computed under Section 4.1(a)(i) based on subsequent information. In the event that due to the Tax Distribution Conditions the funds available for any Tax Distribution to be made hereunder are insufficient to pay the full amount of the Tax Distribution that would otherwise be required under Section 4.1(a)(i), the Company shall use its reasonable best efforts to distribute to the Unitholders the amount of funds that are available after application of the Tax Distribution Conditions on a *pro rata* basis (according to the amounts that would have been distributed to each Unitholder pursuant to Section 4.1(a)(i) if available funds (after application of the Tax Distribution Conditions) existed in a sufficient amount to make such Distribution in full). At any time thereafter when additional funds of the Company are available for Distribution after application of the Tax Distribution Conditions, the Company shall use its reasonable best efforts to immediately distribute such funds to the Unitholders on a *pro rata* basis (according to the amounts that would have been distributed to each Unitholder pursuant to Section 4.1(a)(i) if available funds (after application of the Tax Distribution Conditions) would have existed in a sufficient amount to make such Tax Distribution in full). Notwithstanding anything else to the contrary, Tax Distributions to a Unitholder with respect to any Fiscal Quarter (or portion thereof) shall be reduced



(but not below zero) by the amount of any Distributions made during such Fiscal Quarter (or portion thereof) to such Unitholder that are not Tax Distributions.

(iii) **Additional Tax Distributions.** In the event of any audit by, or similar event with, a taxing authority that affects the calculation of any Unitholder's Assumed Tax Liability for any Taxable Year (other than an audit conducted pursuant to the Partnership Tax Audit Rules for which no election is made pursuant to Code Section 6226 (or any similar provision of state or local law)), or in the event the Company files an amended tax return, each Unitholder's Assumed Tax Liability with respect to such year shall be recalculated by giving effect to such event (for the avoidance of doubt, taking into account interest and penalties). Subject to the Tax Distribution Conditions, distributions shall be made *pro rata* on a per-Common Unit basis in an amount such that each Unitholder and successor to any former Unitholder receives an amount equal to any shortfall in the amount of Tax Distributions the Unitholders and former Unitholders received for the relevant Taxable Years based on such recalculated Assumed Tax Liability, except, for the avoidance of doubt, to the extent Distributions were made to such Unitholders and former Unitholders pursuant to Section 4.1 in the relevant Taxable Years sufficient to cover such shortfall. Notwithstanding the foregoing, Distributions to be made under this Section 4.1(a)(iii) either (i) to a successor of a former Unitholder on account of a shortfall in Tax Distributions to a former Unitholder, or (ii) to a Unitholder in respect of a shortfall in the amount of Tax Distributions to such Unitholder for any Taxable Year (or portion thereof) ending on or before the Closing Date, shall not exceed \$1 million in the aggregate.

(b) **Other Distributions.** Except as otherwise set forth in Section 4.1(a), the Board may (but shall not be obligated to) make Distributions at such time, in such amounts and in such form (including in-kind property) as determined by the Board in its sole discretion, in each case to the holders of Common Units immediately prior to such Distribution on a *pro rata* basis and in accordance with each Unitholder's relative ownership of Units.

#### Section 4.2 **Allocations.**

(a) Subject to Section 4.3, Profits or Losses for any Fiscal Year shall be allocated among the Unitholders in such a manner as to reduce or eliminate, to the extent possible, any difference, as of the end of such Fiscal Year, between (a) the sum of (i) the Capital Account of each Unitholder, (ii) such Unitholder's share of Minimum Gain (as determined according to Treasury Regulation Section 1.704-2(g)) and (iii) such Unitholder's partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(2)) and (b) the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement and the Delaware Act, determined as if the Company were to (i) liquidate the assets of the Company for an amount equal to their Book Value and satisfy the liabilities of the Company in cash (limited in the case of non-recourse liabilities to the Book Value of the assets securing such liabilities) and (ii) distribute the proceeds of such liquidation pursuant to Section 11.2.

(b) If during any Fiscal Year there is a change in any Unitholder's interest in the Company as a result of the admission of one or more Members, the withdrawal of a Member, or a Transfer of an interest in the Company, the Profits, Losses, or any other item allocable to the Unitholders under this Agreement for the Fiscal Year shall be allocated among the Unitholders so as to reflect their varying interests in the Company during the Fiscal Year, using any permissible method convention or extraordinary item under Section 706 of the Code and the Treasury Regulations promulgated thereunder, as reasonably selected by the Board. In furtherance of the foregoing, any such permissible method, convention or extraordinary item selected by the Board shall be set forth in a dated, written statement maintained with the Company's books and records. The Unitholders hereby agree that any such selection by the Board is made by "agreement of the partners" within the meaning of Treasury Regulation Section 1.706-4(f).

#### Section 4.3 **Special Allocations.**

(a) **Minimum Gain Chargeback.** Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury



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Regulation Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(2)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Unitholders in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4).

(b) Unitholder Nonrecourse Debt Minimum Chargeback. Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated to each holder of Common Units ratably among such Unitholders based upon their ownership of Common Units. Except as otherwise provided in Section 4.3(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Unitholder shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(f). This Section 4.3(b) is intended to be a Minimum Gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) Qualified Income Offset. If any Unitholder that unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Section 4.3(a) and Section 4.3(b), but before the application of any other provision of this Article IV, then Profits for such Taxable Year shall be allocated to such Unitholder in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 4.3(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) Allocation of Certain Profits and Losses. Profits and Losses described in Section 3.5(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(e) Regulatory Allocations. The allocations set forth in Sections 4.3(a)-(d) (the “Regulatory Allocations”) are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Unitholders intend to allocate Profit and Loss of the Company or make the Company distributions. Accordingly, notwithstanding the other provisions of this Article IV, but subject to the Regulatory Allocations, income, gain, deduction, and loss shall be reallocated among the Unitholders so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Unitholders to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Unitholders anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Unitholders so that the net amount of the Regulatory Allocations and such special allocations to each such Unitholder is zero. In addition, if in any Fiscal Year or Fiscal Period there is a decrease in partnership Minimum Gain, or in partner nonrecourse debt Minimum Gain, and application of the Minimum Gain chargeback requirements set forth in Section 4.3(a) or Section 4.3(b) would cause a distortion in the economic arrangement among the Unitholders, the Board may, if it does not expect that the Company will have sufficient other income to correct such distortion, request the Internal Revenue Service to waive either or both of such Minimum Gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such Minimum Gain chargeback requirement.

(f) Any item of deduction with respect to a Tax that is offset for a Unitholder under Section 4.6 shall be allocated to the Unitholder for which such payment is to be offset. For the avoidance of doubt, all tax deductions described in this Section 4.3(f) shall be taken into account in determining the amount of Tax Distribution made under the provisions of Section 4.1(a)(i).

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(g) Allocations and other adjustments with respect to any “non-compensatory options” (as defined in Treasury Regulation Section 1.721-2(f)), shall be made in accordance with the Treasury Regulations including Treasury Regulations Section 1.721-2.

Section 4.4 **Offsetting Allocations.** If, and to the extent that, any Member is deemed to recognize any item of income, gain, deduction or loss as a result of any transaction between such Member and the Company pursuant to Sections 83, 482, or 7872 of the Code or any similar provision now or hereafter in effect, the Board shall use its commercially reasonable efforts to allocate any corresponding Profit or Loss to the Member who recognizes such item in order to reflect the Members’ economic interest in the Company.

### Section 4.5 **Tax Allocations.**

(a) **Allocations Generally.** Except as provided in Section 4.5(b) below, for U.S. federal, state and local income Tax purposes, each item of income, gain, loss or deduction shall be allocated among the Unitholders in the same manner and in the same proportion that the corresponding book items have been allocated among the Unitholders’ respective Capital Accounts; *provided* that, if any such allocation is not permitted by the Code or other applicable law, then each subsequent item of income, gains, losses, deductions and credits will be allocated among the Unitholders so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) **Code Section 704(c) Allocations.** Items of the Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for Tax purposes, be allocated among the Unitholders in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such asset for federal income Tax purposes and its initial Book Value. Such allocations shall be made using a reasonable method specified in Treasury Regulations Section 1.704-3. In addition, if the Book Value of any Company asset is adjusted pursuant to the requirements of Treasury Regulation Section 1.704-1(b)(2)(iv)(e) or (f), then subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income Tax purposes and its Book Value in the same manner as under Code Section 704(c). Notwithstanding the foregoing, the Board shall determine all allocations pursuant to this Section 4.5(b) using any method selected by the Board that is permitted under Section 704(c) of the Code and the Treasury Regulations thereunder.

(c) **Section 754 Election.** The Company will make an election under Section 754 of the Code (or any comparable election under relevant state or local Law) for its Taxable Year that includes or begins on the date of this Agreement to adjust the basis of the Company property as permitted and provided in Sections 734 and 743 of the Code. Such election shall be effective solely for federal (and, if applicable, state and local) income Tax purposes and shall not result in any adjustment to the Book Value of any Company asset or to the Member’s Capital Accounts (except as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(m)).

(d) **Allocation of Tax Credits, Tax Credit Recapture, Etc.** Allocations of Tax credits, Tax credit recapture, and any items related thereto shall be allocated to the Unitholders according to their interests in such items as determined by the Board taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii) and (viii).

(e) **Corrective Allocations.** If necessary, the Company will make corrective allocations as set forth in Treasury Regulation Section 1.704-1(b)(4)(x).

(f) **Effect of Allocations.** Allocations pursuant to this Section 4.5 are solely for purposes of U.S. federal, state and local Taxes and shall not affect, or in any way be taken into account in computing, any Unitholder’s Capital Account or share of Profits, Losses, Distributions (other than Tax Distributions) or other items pursuant to any provision of this Agreement.

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Section 4.6 **Indemnification and Reimbursement for Payments on Behalf of a Unitholder.** Except as otherwise provided in Article VI, if the Company is required by law to make any payment to a Governmental Entity that is specifically attributable to a Unitholder or a Unitholder's status as such (including U.S. federal withholding Taxes, state personal property Taxes, and state unincorporated business Taxes), then such Unitholder shall indemnify and contribute to the Company in full for the entire amount paid (including interest, penalties and related expenses). The Board may offset Distributions or other amounts to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 4.6 or with respect to any other amounts owed by the Unitholder to the Company or any of its Subsidiaries. A Unitholder's obligation to indemnify and make contributions to the Company under this Section 4.6 shall survive the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 4.6, the Company shall be treated as continuing in existence, and will survive any partial or complete Transfer or redemption of Unitholder's interest in the Company. The Company may pursue and enforce all rights and remedies it may have against each Unitholder under this Section 4.6, including instituting a lawsuit to collect such indemnification and contribution, with interest calculated at a rate equal to the Base Rate plus three percentage points per annum (but not in excess of the highest rate per annum permitted by law), compounded on the last day of each Fiscal Quarter.

Section 4.7 **Prior Agreements Allocations.** The parties acknowledge and agree that in connection with the consummation of the Transactions contemplated by the Transaction Agreement, there shall be a closing of the books of the Company in accordance with Code Section 706 and the Treasury Regulations thereunder utilizing the "interim closing method" under the monthly convention, and that in connection therewith (x) all items of profit, gain, deduction, loss and credit attributable to taxable periods (or portions thereof) ending prior to the date hereof shall be made to the members of the Company in such periods in accordance with the Prior LLC Agreement, and (y) all items of profit, gain, deduction, loss and credit attributable to taxable periods (or portions thereof) beginning on or after the date hereof shall be made in accordance with this Agreement.

## **ARTICLE V MANAGEMENT AND CONTROL OF BUSINESS**

### **Section 5.1 Management.**

(a) **Establishment.** Except as otherwise specifically provided in this Agreement or by non-waivable provision of the Delaware Act, the business, property and affairs of the Company shall be managed, operated and controlled at the sole, absolute and exclusive direction of the board of managers (the "**Board**") and each manager of the Board, a "**Manager**") in accordance with the terms of this Agreement. Except as otherwise expressly provided by this Agreement, no Member shall have management authority or voting or other rights over, or any other ability to take part in the conduct or control of the business of, the Company. Each Manager shall be a "manager" (as defined in the Delaware Act) of the Company, but notwithstanding the foregoing, no Manager shall have any rights or powers beyond the rights and powers granted to such Manager in this Agreement. Notwithstanding any duty existing at law, in equity or otherwise, with respect to any matter that is to be voted on by the Managers, a Manager may grant a proxy to any other Manager or other Person.

(b) **Number of Managers; Term of Office.** The authorized number of Managers shall be two Managers. The following individuals shall initially be elected to the Board:

(i) one representative designated by Vivid Seats or any successor Manager designated by Vivid Seats (the "**Vivid Seats Manager**"), who shall initially be [●]; and

(ii) one representative designated by Topco or any successor Manager designated by Topco (the "**Topco Manager**"), who shall initially be [●].

The Managers shall hold office until their respective successors are designated in accordance with the terms set forth below.

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(c) Vacancies. In the event that any designee under Section 5.1(b) for any reason ceases to serve as a member of the Board, the resulting vacancy on the Board shall be filled by the Person that is originally entitled to designate such Manager pursuant to Section 5.1(b) (provided that, if any party fails to designate a person to fill a vacancy on the Board pursuant to the terms of this Section 5.1(c), such vacant managership shall remain vacant until such managership is filled pursuant to this Section 5.1(c)).

(d) Voting. For each matter that is put to a vote of the Board, the Vivid Seats Manager shall be entitled to two (2) votes, and the Topo Manager shall be entitled to one (1) vote. Any decisions to be made by the Board shall require the approval of a majority of the votes entitled to vote on such matter.

(e) Powers. The Board is, to the extent of its rights and powers set forth in this Agreement, an agent of the Company for the purpose of the Company's business, and the actions of the Board taken in accordance with such rights and powers shall bind the Company (and no Member shall have such right). The Board shall have all necessary powers to carry out the purposes, business and objectives of the Company. The Board may delegate in its discretion the authority to sign agreements and other documents and take other actions on behalf of the Company to any Person (including any Member, officer or employee of the Company) to enter into and perform any document on behalf of the Company. Without limiting the foregoing, the Board shall have the sole power and authority to effect any of the following by the Company or any of its Subsidiaries in one or a series of related transactions, in each case without the vote, consent or approval of any other Member or Unitholder or any other Person: (i) any sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company); (ii) any merger, consolidation, division, reorganization or other combination of the Company with or into another entity, (iii) any acquisition; (iv) any issuance of debt or equity securities; or (v) any incurrence of indebtedness. Except for any vote, consent or approval of any Unitholder expressly required by this Agreement, if a vote, consent or approval of the Unitholders is required by the Delaware Act or other applicable law with respect to any action to be taken by the Company or matter considered by the Board, each Unitholder will be deemed to have consented to or approved such action or voted on such matter in accordance with the consent or approval of the Board on such action or matter.

(f) Meetings of the Board. The Board shall meet at such time and at such place (either within or without the State of Delaware) as the Board may designate. Advance notice of any regular or special meeting shall be given to the Managers at least two (2) business days in advance of such meeting. The business to be transacted at, or the purpose of, any regular or special meeting of the Board shall be specified in reasonable detail in such notice. A record shall be maintained by the Company of each meeting of the Board.

(g) Conduct of Meetings. Any meeting of the Board may be held, and any Manager may attend and vote and be present at a meeting, in person (including by proxy given to another Manager), telephonically or by means of other communications equipment allowing all persons participating in the meeting to hear each other.

(h) Quorum. The presence (in person, telephonically, by means of communications equipment, by proxy or by operation of this Section 5.1(h)) of the Managers holding a majority of votes entitled to vote shall constitute a quorum of the Board for purposes of conducting business. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting.

(i) Attendance and Waiver of Notice. Attendance by a Manager at any meeting (in person, telephonically, by means of communications equipment or by proxy) shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(j) Actions Without a Meeting. Notwithstanding any provision contained in this Agreement, any action of the Board may be taken by written consent without a meeting. Any such action taken by the Board without a

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meeting shall be effective only if the written consent or consents are in writing, setting forth the action so taken, and signed by all Managers.

(k) Compensation of Managers; Reimbursement. Except as approved by the Board, and then only in reasonable amounts as determined by the Board, the Managers shall receive no compensation for serving in such capacity. The Managers constituting the Board shall be entitled to be reimbursed, out of available cash, for reasonable out-of-pocket costs and expenses incurred in the course of their service hereunder.

(l) Reliance by Third Parties. Any Person dealing with the Company, other than a Unitholder, may rely on the authority of the Board (or any Officer authorized by the Board) in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Agreement. Every agreement, instrument or document executed by the Board (or any Officer authorized by the Board) in the name of the Company with respect to any business or property of the Company shall be conclusive evidence in favor of any Person relying thereon or claiming thereunder that (i) at the time of the execution or delivery thereof, this Agreement was in full force and effect, (ii) such agreement, instrument or document was duly executed according to this Agreement and is binding upon the Company and (iii) the Board or such Officer was duly authorized and empowered to execute and deliver such agreement, instrument or document for and on behalf of the Company.

Section 5.2 Investment Company Act. The Board shall use reasonable best efforts to ensure that the Company shall not be subject to registration as an investment company pursuant to the Investment Company Act.

### Section 5.3 Officers.

(a) Officers. Unless determined otherwise by the Board, the officers of the Company shall be a Chief Executive Officer, a President, a Chief Financial Officer, a Treasurer and a Secretary and each other officer of Vivid Seats shall also be an officer of the Company, with the same title. All officers shall be appointed by the Board (or by the Chief Executive Officer to the extent the Board delegates such authority to the Chief Executive Officer) and shall hold office until their successors are appointed by the Board (or by the Chief Executive Officer to the extent the Board delegates such authority to the Chief Executive Officer). Two or more offices may be held by the same individual. The officers of the Company may be removed by the Board (or by the Chief Executive Officer to the extent the Board delegates such authority to the Chief Executive Officer) at any time for any reason or no reason.

(b) Other Officers and Agents. The Board may appoint such other officers and agents as it may deem necessary or advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

(c) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Company and shall have the general powers and duties of supervision and management usually vested in the office of a chief executive officer of a company. He or she shall preside at all meetings of Members if present thereat.

(d) President. The President shall be the chief executive officer of the Company in the absence of the Chief Executive Officer. In general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed from time to time by the Board.

(e) Chief Financial Officer. The Chief Financial Officer shall be the chief financial officer of the Company and shall keep and maintain or cause to be kept and maintained adequate and correct books and records of accounts of the properties and business transactions of the Company. The books of account shall at all times be open to inspection by the Board. The Chief Financial Officer shall deposit all monies and other valuables in the name of, and to the credit of, the Company with such depositaries as may be designated by the Board.

(f) **Treasurer.** The Treasurer shall have the custody of Company funds and securities and shall keep full and accurate account of receipts and disbursements. He or she shall deposit all moneys and other valuables in the name and to the credit of the Company in such depositaries as may be designated by the Board or the Chief Executive Officer. The Treasurer shall disburse the funds of the Company as may be ordered by the Board or the Chief Executive Officer, taking proper vouchers for such disbursements. He or she shall render to the Board and the Chief Executive Officer whenever either of them may request it, an account of all his or her transactions as Treasurer and of the financial condition of the Company. If required by the Board, the Treasurer shall give the Company a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board shall prescribe.

(g) **Secretary.** The Secretary shall give, or cause to be given, notice of all meetings of Members and all other notices required by applicable law or by this Agreement, and in case of his or her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chief Executive Officer, or by the Board. He or she shall record all the proceedings of the meetings of the Company, and shall perform such other duties as may be assigned to him or her by the Board or by the Chief Executive Officer.

(h) **Other Officers.** Other officers, if any, shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Board or by the Chief Executive Officer.

#### Section 5.4 **Fiduciary Duties.**

(a) **Members and Unitholders.** To the fullest extent permitted by law, including Section 18-1101(e) of the Delaware Act, and notwithstanding any duty otherwise existing at law or in equity, no Member or Unitholder, solely in its capacity as such, shall owe any fiduciary duty to the Company, the Board, any Member, any Unitholder or any other Person bound by this Agreement, *provided* that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. Nothing in this Section 5.4(a) shall limit the liabilities, duties or obligations of any Member or Unitholder acting in his or her capacity as an officer or Board pursuant to any other provision of this Agreement.

(b) **Board and Officers.** Notwithstanding any other provision to the contrary in this Agreement, except as set forth in the last sentence of Section 5.1(a) or Section 5.4(c), (i) the Managers shall, in their capacity as Managers, and not in any other capacity, have the same fiduciary duties to the Company and the Unitholders and Members as members of a board of directors of a Delaware corporation; and (ii) each officer of the Company shall, in his or her capacity as such, and not in any other capacity, have the same fiduciary duties to the Company and the Unitholders and Members as an officer of a Delaware corporation. For the avoidance of doubt, the fiduciary duties described in clause (i) above shall not be limited by the fact that the Board shall be permitted to take certain actions in its sole or reasonable discretion pursuant to the terms of this Agreement or any agreement entered into in connection herewith.

(c) **Board Conflicts.** The parties hereto acknowledge that the members of Vivid Seats' board of directors will owe fiduciary duties to Vivid Seats and its stockholders. The Board will use commercially reasonable and appropriate efforts and means, as determined in good faith by the Board, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of Vivid Seats, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Board, the Members and/or the stockholders of Vivid Seats in a manner that does not (i) disadvantage the Members of their interests relative to the stockholders of Vivid Seats or (ii) advantage the stockholders of Vivid Seats relative to the Members or (iii) treat the Members and the stockholders of Vivid Seats differently; *provided* that in the event of a conflict between the interests of the stockholders of Vivid Seats and the interests of the Members, such Members agree that the Board shall discharge its fiduciary duties to such Members by acting in the best interests of Vivid Seats' stockholders.

(d) **Waiver.** Any duties and liabilities set forth in this Agreement shall replace those existing at law or in equity and each of the Company, each Member and Unitholder and any other Person bound by this Agreement

hereby, to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Delaware Act, waives the right to make any claim, bring any action or seek any recovery based on any duties or liabilities existing at law or in equity other than any such duties and liabilities set forth in this Agreement.

## ARTICLE VI EXCULPATION AND INDEMNIFICATION

### Section 6.1 Exculpation.

(a) Actions in Capacity as a Member or Unitholder. To the fullest extent permitted by applicable law, and except as otherwise expressly provided herein, no Member, Unitholder (other than the Board, acting in its capacity as such) or its respective Indemnitees shall be liable to the Company, any Member, any Unitholder or any other Person bound by this Agreement as a result of or arising out of any action of or omission by such Member or Unitholder solely in its capacity as a Member or Unitholder, except to the extent such Obligations arise out of such Member's (1) material breach of this Agreement or any other Transaction Document or (2) bad faith violation of the implied contractual covenant of good faith and fair dealing, in each case as determined by a final judgment, order or decree of an arbitrator or a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal therefrom has expired and no appeal has been perfected).

(b) Other Actions. To the fullest extent permitted by applicable law, and except as otherwise expressly provided herein, no Indemnitee shall be liable to the Company, any Member, any Unitholder or any other Person bound by this Agreement as a result of or arising out of the activities of the Indemnitee on behalf of the Company to the extent within the scope of the authority reasonably believed by such Indemnitee to be conferred on such Indemnitee, except to the extent such Indemnitee would not be entitled to exculpation or indemnification pursuant to the articles of incorporation and bylaws of Vivid Seats (as the same may be amended from time to time).

Section 6.2 Indemnification. To the fullest extent permitted by applicable law, each of (a) the Managers, (b) the Unitholders and Members and their respective Affiliates, (c) the stockholders, members, managers, directors, officers, partners, employees and agents of the Unitholders, Members and their respective Affiliates, (d) the PR and any "designated individual" and (e) the officers and directors of Vivid Seats, the Company and each of their Subsidiaries (each, an "Indemnitee") shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (collectively, "Obligations"), which at any time may be imposed on, incurred by, or asserted against, the Indemnitee as a result of or arising out of this Agreement, Vivid Seats, the Company, their respective assets, businesses or affairs, or the activities of the Indemnitee on behalf of Vivid Seats, the Company or any of their Subsidiaries to the extent within the scope of the authority reasonably believed to be conferred on such Indemnitee; *provided, however*, that, to the extent such Indemnitee is not entitled to exculpation with respect to such Obligations pursuant to Section 6.1, the Indemnitee shall not be entitled to indemnification for any such Obligations to the extent such Indemnitee would not be entitled to exculpation or indemnification pursuant to the articles of incorporation and bylaws of Vivid Seats (as the same may be amended from time to time); *provided further*, that, to the extent such Indemnitee is entitled to exculpation with respect to such Obligations pursuant to Section 6.1, the Indemnitee shall not be entitled to indemnification for any such Obligations to the extent they arise out of such Indemnitee's (1) material breach of this Agreement or any other Transaction Document or (2) bad faith violation of the implied contractual covenant of good faith and fair dealing. 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 the Indemnitee was not entitled to indemnification hereunder. Any indemnification pursuant to this Section 6.2 shall be made only out of the assets of the Company and no Member shall have any personal liability on account thereof.

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Section 6.3 **Expenses.** Expenses (including reasonable legal fees and expenses) incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding described in [Section 6.2](#) shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding, upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as provided in [Section 6.2](#); *provided* that such undertaking shall be unsecured and interest free and shall be accepted without regard to an Indemnitee's ability to repay amounts advanced and without regard to an Indemnitee's entitlement to indemnification.

Section 6.4 **Non-Exclusivity; Savings Clause.** The indemnification and advancement of expenses set forth in [Section 6.2](#) and [Section 6.3](#) shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other agreement, policy of insurance or otherwise. The indemnification and advancement of expenses set forth in [Section 6.2](#) and [Section 6.3](#) shall continue as to an Indemnitee who has ceased to be a named Indemnitee and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of such a Person. If [Section 6.1](#), [Section 6.2](#) or [Section 6.3](#) or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless exculpate, indemnify and advance expenses each Indemnitee to the fullest extent permitted by any applicable portion of such sections not so invalidated and to the fullest extent permitted by applicable law. The exculpation, indemnification and advancement of expenses provisions set forth in [Section 6.1](#), [Section 6.2](#) and [Section 6.3](#) shall be deemed to be a contract between the Company and each of the Persons constituting Indemnitees at any time while such provisions remain in effect, whether or not such Person continues to serve in such capacity and whether or not such Person is a party hereto. In addition, neither [Sections 6.1](#), [Section 6.2](#) nor [Section 6.3](#) may be retroactively amended to adversely affect the rights of any Indemnitee arising in connection with any acts, omissions, facts or circumstances occurring prior to such amendment.

Section 6.5 **Insurance.** The Company may purchase and maintain insurance on behalf of the Indemnitees against any liability asserted against them and incurred by them in such capacity, or arising out of their status as Indemnitees, whether or not the Company would have the power to indemnify them against such liability under this [Article VI](#).

## ARTICLE VII ACCOUNTING AND RECORDS; TAX MATTERS

Section 7.1 **Accounting and Records.** The books and records of the Company shall be made and maintained, and the financial position and the results of its operations recorded, at the expense of the Company, in accordance with such method of accounting as is determined by the Board. The books and records of the Company shall reflect all Company transactions and shall be made and maintained in a manner that is appropriate and adequate for the Company's business.

### Section 7.2 **Preparation of Tax Returns.**

(a) The Company shall arrange for the preparation and timely filing of all Tax returns required to be filed by the Company, and making any elections described in [Section 7.3](#). Each Unitholder shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's income Tax returns to be prepared and filed.

(b) The Company shall deliver to each Unitholder (A) preliminary information relating to the Company (including a draft Schedule K-1) that is necessary for the preparation of such Unitholder's returns for federal and state income Tax and any other Tax reporting purposes for a Taxable Year no later than February 15 of the following Taxable Year and (B) by February 28 of such following Taxable Year, such final information (including a final Schedule K-1) that is consistent in all respects with the estimates provided pursuant to clause



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(A), subject to any reasonable comments received from Unitholders owning 5% or more of the outstanding Common Units that are received by February 23 of such following Taxable Year, which the Company shall consider in good faith. Subject to the preceding sentence, for so long as any Unitholder owns 5% or more of the outstanding Common Units, the Company shall (i) send a draft of any income tax return of the Company (other than the information and schedules referred to in the preceding sentence) to such Unitholder, at least fifteen (15) days prior to filing, for review and comment, and (ii) consider in good faith all reasonable comments received from such Unitholder at least five (5) days prior to the due date for the filing of any such tax return.

Section 7.3 **Tax Elections**. The Taxable Year shall be the Fiscal Year unless the Board shall determine otherwise. The Board shall determine whether to make or revoke any available election pursuant to the Code. Each Unitholder will upon request supply any information necessary to give proper effect to such election.

### Section 7.4 **Tax Controversies**.

(a) Vivid Seats shall be the “partnership representative” (or “PR”) of the Company for purposes of the Partnership Tax Audit Rules, and, as such, shall be authorized to designate any other Person selected by Vivid Seats as the partnership representative. Each Member, by execution of this Agreement, hereby consents to the appointment of Vivid Seats (or its designee) as the PR as set forth herein and agrees to execute, certify, acknowledge, deliver, swear to, file and record, at the appropriate public offices, such documents as may be necessary or appropriate to evidence such consent and agrees to take, and that the PR is authorized to take (or cause the Company to take), such other actions as may be necessary pursuant to the Partnership Tax Audit Rules to cause such designation. The PR shall be authorized and required to represent the Company (at the Company’s expense) in connection with all audits and examinations of the Company’s affairs by Tax authorities, including resulting administrative and judicial proceedings, and to expend the Company’s funds for professional services and reasonably incurred in connection therewith. In addition, the PR shall have the power and authority to (i) manage, control, settle, challenge, litigate, or prosecute, on behalf of the Company, any administrative proceedings or other action at the Company level with the Internal Revenue Service or any other taxing authority relating to the determination of any item of Company income, gain, loss, deduction, or credit for federal income tax purposes or otherwise relating to the Partnership Tax Audit Rules, and (ii) make any election under the Partnership Tax Audit Rules, and the PR shall have all other rights and powers granted under the Partnership Tax Audit Rules to a PR with respect to the Company and its Members; provided, in each case, that as long as any Unitholder owns 5% or more of the outstanding Common Units, (A) the PR shall notify such Unitholder of, and keep such Unitholder reasonably informed with respect to, any such audits, examinations or resulting proceedings the outcome of which is reasonably expected to affect the tax liabilities of such Unitholder, (B) such Unitholder shall have the right to discuss with the PR, and provide input and comment to the PR regarding, any such audits, examinations or resulting proceedings, and (C) neither the PR nor any designated individual shall settle or compromise any such audits, examinations or resulting proceedings to the extent they relate to issues the resolution of which would reasonably be expected to affect the tax liability of such Unitholder without such Unitholder’s consent, such consent not to be unreasonably withheld, conditioned or delayed. Each Unitholder agrees to reasonably cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. For each Taxable Year in which the PR is an entity, the Company shall appoint the “designated individual” identified by the PR to act on its behalf in accordance with the applicable Partnership Tax Audit Rules. Promptly following a request of the PR or designated individual, the Company shall, to the fullest extent permitted by law, reimburse and indemnify the PR and designated individual for all reasonable expenses, including legal and accounting fees, incurred by the PR and/or designated individual in its capacity as such.

(b) In the event of an audit by the Internal Revenue Service, or another applicable taxing authority, the PR shall make on a timely basis, to the extent permissible under applicable law, the election provided by Section 6226(a) of the Partnership Tax Audit Rules to treat a “partnership adjustment” as an adjustment to be taken into account by each Unitholder in accordance with Section 6226(b) of the Partnership Tax Audit Rules. If the election under Section 6226(a) of the of the Partnership Tax Audit Rules is made, each Unitholder who was a

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Unitholder of the Company for U.S. federal income tax purposes for the “reviewed year” (within the meaning of Code Section 6225(d)(1) of the Partnership Tax Audit Rules) shall take such adjustment into account as required under Section 6226(b) of the Partnership Tax Audit Rules and shall be liable for any related tax, interest, penalty, addition to tax, or additional amounts.

(c) In the event of an audit by the Internal Revenue Service or other applicable taxing authority, if the PR does not or is otherwise unable to make the election provided by Section 6226(a) of the Partnership Tax Audit Rules as noted above, the PR shall allocate the burden of any taxes (including, for the avoidance of doubt, any “imputed underpayment” within the meaning of Section 6225 of the Partnership Tax Audit Rules), penalties, interest and related expenses imposed on the Company pursuant to the Partnership Tax Audit Rules among the Unitholder to whom such amounts are attributable (whether as a result of their status, actions, inactions or otherwise), as reasonably determined by the PR and each Unitholder shall promptly upon request from the Board (and in any event within 5 days of such request) reimburse the Company in full for the entire amount the PR determines to be attributable to such Unitholder; *provided* that the Company will also be allowed to recover any amount due from such Unitholder pursuant to this sentence from any distribution otherwise payable to such Unitholder pursuant to this Agreement. Solely for purposes of determining the current Unitholder(s) to which any taxes or other amounts are attributable under this provision, references to any Unitholder in this [Section 7.4\(c\)](#) shall include a reference to each Person that previously held the Units currently held by such Unitholder (but only to the extent of such Person’s interest in such Units).

(d) The PR is authorized to, and shall follow principles (to the extent available) similar to those set forth in [Section 7.4\(a\)](#), [Section 7.4\(b\)](#) and [Section 7.4\(c\)](#) with respect to any audits by state, local, or foreign tax authorities and any tax liabilities that result therefrom.

(e) This [Section 7.4](#) shall be interpreted to apply to Members and former Members and shall survive the transfer of a Member’s Units, the termination of this Agreement, and the termination, dissolution, liquidation and winding up of the Company.

## ARTICLE VIII TRANSFER OF UNITS; ADMISSION OF NEW MEMBERS

Section 8.1 **Transfer of Units.** Other than as provided for below in this [Section 8.1](#), no Member may sell, assign, transfer, grant a participation in, pledge, hypothecate, encumber or otherwise dispose of (such transaction being herein collectively called a “Transfer”) all or any portion of its Units except with the approval of the Board, which may be granted or withheld in its sole discretion. Without the approval of the Board (but otherwise in compliance with [Section 8.1](#)), a Member may, at any time, (a) Transfer any portion of such Member’s Units pursuant to [Article IX](#), and (b) Transfer any portion of such Member’s Units to a Permitted Transferee of such Member. Any Transfer of Units to a Permitted Transferee of such Member by a Member which also holds Class B Common Stock must be accompanied by the transfer of a corresponding number of shares of Class B Common Stock (determined based upon the Exchange Rate then in effect) to such Permitted Transferee. Any purported Transfer of all or a portion of a Member’s Units not complying with this [Section 8.1](#) shall be void and shall not create any obligation on the part of the Company or the other Members to recognize that purported Transfer or to recognize the Person to which the Transfer purportedly was made as a Member. A Person acquiring a Member’s Units pursuant to this [Section 8.1](#) shall not be admitted as a Substituted Member or an Additional Member except in accordance with the requirements of [Section 8.2](#), but such Person shall, to the extent of the Units transferred to it, be entitled to such Member’s (i) share of Distributions, (ii) share of Profits and Losses and (iii) Capital Account in accordance with [Section 3.5](#). Notwithstanding anything in this [Section 8.1](#) or elsewhere in this Agreement to the contrary, if a Member Transfers all or any portion of its Units after the designation of a record date and declaration of a Distribution pursuant to [Section 4.1](#) and before the payment date of such distribution, the transferring Member (and not the Person acquiring all or any portion of its Units) shall be entitled to receive such Distribution in respect of such transferred Units. Notwithstanding the

foregoing, except as otherwise provided in this Agreement, including in [Sections 3.2, 3.3 and 3.13](#) and [Article IX](#), Vivid Seats may not Transfer all or any part of its Units without the consent of the Members (other than Vivid Seats) holding at least a majority of the aggregate Common Units then outstanding and held by such Members.

**Section 8.2 Recognition of Transfer; Substituted and Additional Members.**

(a) No direct or indirect Transfer of all or any portion of a Member's Units may be made, and no purchaser, assignee, transferee or other recipient of all or any part of such Units shall be admitted to the Company as a Substituted Member or Additional Member hereunder, unless:

(i) the provisions of [Section 8.1](#) shall have been complied with;

(ii) in the case of a proposed Substituted Member or Additional Member that is (A) a competitor or potential competitor of Vivid Seats or the Company or their respective Subsidiaries, (B) a Person with whom Vivid Seats or the Company or their respective Subsidiaries has had or is expected to have a material commercial or financial relationship or (C) likely to subject Vivid Seats or the Company or their respective Subsidiaries to any material legal or regulatory requirement or obligation, or materially increase the burden thereof, in each case as determined by the Board in its sole discretion, the admission of the purchaser, assignee, transferee or other recipient as a Substituted Member or Additional Member shall have been approved by the Board;

(iii) the Board shall have been furnished with the documents effecting such Transfer, in form and substance reasonably satisfactory to the Board, executed and acknowledged by both the seller, assignor or transferor and the purchaser, assignee, transferee or other recipient, and the Board shall have executed (and the Board hereby agrees to execute) any other documents on behalf of itself and the Members required to effect the Transfer;

(iv) the provisions of [Section 8.2\(b\)](#) shall have been complied with;

(v) the Board shall be reasonably satisfied that such Transfer will not (A) result in a violation of the Securities Act or any other applicable law; or (B) cause an assignment under the Investment Company Act;

(vi) such Transfer would not cause the Company to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code or any other association taxable as a corporation for federal income tax purposes and, without limiting the generality of the foregoing, such Transfer shall not be effected on or through an "established securities market" or a "secondary market or the substantial equivalent thereof," as such terms are used in Treas. Reg. § 1.7704-1;

(vii) the Board shall have received the opinion of counsel, if any, required by [Section 8.2\(c\)](#) in connection with such Transfer; and

(viii) all necessary instruments reflecting such Transfer and/or admission shall have been filed in each jurisdiction in which such filing is necessary in order to qualify the Company to conduct business or to preserve the limited liability of the Members.

(b) Each Substituted Member and Additional Member shall be bound by all of the provisions of this Agreement. Each Substituted Member and Additional Member, as a condition to its admission as a Member, shall execute and acknowledge such instruments (including a counterpart of this Agreement or a joinder agreement in customary form), in form and substance reasonably satisfactory to the Board, as the Board reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such Substituted Member or Additional Member to be bound by all the terms and provisions of this Agreement with respect to the Units acquired by such Substituted Member or Additional Member. The admission of a Substituted Member or Additional Member shall not require the consent of any Member (but shall require the consent of the Board, if and to the extent such consent of the Board is expressly required by this [Article VIII](#)). As promptly as practicable after the admission of a Substituted Member or Additional Member, the Unit Ownership Ledger and other books and records of the Company shall be changed to reflect such admission.

(c) As a further condition to any Transfer of all or any part of a Member's Units, the Board may, in its discretion, require a written opinion of counsel to the transferring Member reasonably satisfactory to the Board, obtained at the sole expense of the transferring Member, reasonably satisfactory in form and substance to the Board, as to such matters as are customary and appropriate in transactions of this type, including, without limitation (or, in the case of any Transfer made to a Permitted Transferee, limited to an opinion) to the effect that such Transfer will not result in a violation of the registration or other requirements of the Securities Act or any other federal or state securities laws. No such opinion, however, shall be required in connection with a Transfer made pursuant to [Article IX](#).

Section 8.3 **Expense of Transfer; Indemnification**. All reasonable costs and expenses incurred by the Board and the Company in connection with any Transfer of a Member's Units, including any filing and recording costs and the reasonable fees and disbursements of counsel for the Company, shall be paid by the transferring Member. In addition, the transferring Member hereby indemnifies the Board and the Company against any losses, claims, damages or liabilities to which the Board, the Company, or any of their Affiliates may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Member or such transferee in connection with such Transfer.

## ARTICLE IX REDEMPTION; EXCHANGE

### Section 9.1 **Redemption of Common Units**.

#### (a) **Elective Redemption**.

(i) From and after the First Redemption Time, each Member (other than Vivid Seats and its Subsidiaries) shall be entitled, upon the terms and subject to the conditions hereof, to cause the Company to redeem its Redeemable Units in whole or in part, in each case, relating to a corresponding number of shares of Class B Common Stock after taking into account the Exchange Rate (in each case, free and clear of all Liens) of such Member, in exchange for the delivery to the Member (or its designee) of either, at the option of Vivid Seats, (x) a number of shares of Class A Common Stock that is equal to the product of the applicable Redeemed Unit Amount multiplied by the Exchange Rate or (y) solely in connection with a Redemption (including a Change of Control Redemption) that coincides with a substantially concurrent public offering or private sale of Class A Common Stock, the applicable Cash Payment. Any redemption of Redeemable Units for Class A Common Stock or the Cash Payment, as applicable, is defined herein as a "**Redemption**." Subject to [Section 9.1\(a\)\(ii\)](#), after the First Redemption Time, each Member (other than Vivid Seats and its Subsidiaries) may elect to cause the Company to redeem Redeemable Units at any time and from time to time in accordance with the terms of this Agreement, but a Unitholder may not cause a Redemption more than once per Fiscal Quarter without the prior consent of Vivid Seats. The minimum number of Redeemable Units (and corresponding number of shares of Class B Common Stock after taking into account the Exchange Rate, if any) that may be redeemed by any Member shall be the lesser of (1) 20,000 and (2) all of the Redeemable Units (and corresponding number of shares of Class B Common Stock taking into account the Exchange Rate, if any) then held by such Member and its Affiliates. Notwithstanding anything to the contrary herein, the Company shall not, nor shall Vivid Seats pursuant to [Section 9.1\(f\)](#), effectuate a Cash Payment pursuant to this [Section 9.1\(a\)](#) or [Section 9.1\(b\)](#) unless (A) Vivid Seats determines to consummate a private sale or public offering of Class A Common Stock on, or not later than five (5) Business Days after, the relevant Redemption Date and (B) Vivid Seats contributes sufficient proceeds from such private sale or public offering to the Company for payment by the Company of the applicable Cash Payment. For the avoidance of doubt, the Company shall have no obligation to make a Cash Payment that exceeds the cash contributed to the Company by Vivid Seats from Vivid Seats' offering or sales of Class A Common Stock referenced earlier in this [Section 9.1\(a\)\(i\)](#).

(ii) Notwithstanding anything to the contrary contained herein, the Company shall not, nor shall Vivid Seats pursuant to [Section 9.1\(f\)](#), be obligated to effectuate a Redemption of Redeemable Units as set forth in this [Section 9.1\(a\)](#), and the Company shall have the right to refuse to honor any request for such a Redemption, if at any time Vivid Seats or the Company determines based on the advice of counsel that such Redemption would be prohibited by law or regulation (including, without limitation, the unavailability of a registration of such Redemption under the Securities Act, or an exemption from the registration requirements thereof). Upon such determination, Vivid Seats or the Company (as applicable) shall notify the Member requesting such Redemption, which such notice shall include an explanation in reasonable detail as to the reason that the Redemption request has not been honored.

(iii) A Member shall exercise its right to cause the Company to effectuate a Redemption of Redeemable Units, as set forth in this [Section 9.1\(a\)](#) by delivering to the Company, with a contemporaneous copy delivered to Vivid Seats, during normal business hours, (A) a written election of redemption in respect of the Redeemable Units to be redeemed substantially in the form of [Exhibit A](#) hereto (a “[Redemption Notice](#)”), duly executed by such Member; (B) any certificates in such Member’s possession representing such Redeemable Units, (C) any stock certificates in such Member’s possession representing the corresponding number of shares of Class B Common Stock to be retired in connection with such Redemption, in accordance with [Section 4.04\(b\)](#) of the Vivid Seats’ certificate of incorporation and (D) if Vivid Seats, the Company or any redeeming Subsidiary requires the delivery of the certification contemplated by [Section 9.4\(b\)](#), such certification or written notice from such Member that it is unable to provide such certification. Unless such Member timely has delivered a Retraction Notice pursuant to [Section 9.1\(a\)\(vi\)](#), a Redemption pursuant to this [Section 9.1\(a\)](#) shall be effected on the fifth (5<sup>th</sup>) Business Day following the Business Day on which Vivid Seats and the Company have received the items specified in clauses (A)-(D) of the first sentence of this [Section 9.1\(a\)\(iii\)](#) or such later date that is a Business Day specified in the Redemption Notice (such Business Day, the “[Redemption Date](#)”); *provided*, that the Company may establish alternate exchange procedures as necessary in order to facilitate the establishment by such Member of a trading plan meeting the requirements of Rule 10b5-1 under the Exchange Act. On the Redemption Date, all rights of such Member as a holder of the Redeemable Units (and the corresponding number of shares of Class B Common Stock to be cancelled) that are subject to the Redemption shall cease, and unless the Company has elected Cash Payment, such Member (or its designee) shall be treated for all purposes as having become the record holder of the shares of Class A Common Stock to be received by such Member in respect of such Redemption.

(iv) Within two (2) Business Days following the Business Day on which Vivid Seats and the Company have received the Redemption Notice, the Company shall give written notice (the “[Contribution Notice](#)”) to such Member of its intended settlement method; *provided* that if the Company does not timely deliver a Contribution Notice, the Company shall be deemed to have not elected the Cash Payment method.

(v) The Member may specify, in an applicable Redemption Notice, that the Redemption is to be contingent (including as to timing) upon the occurrence of any transaction or event, including the consummation of a purchase by another Person (whether in a tender or exchange offer, an underwritten offering, Change of Control transaction or otherwise) of shares of Class A Common Stock or any merger, consolidation or other business combination.

(vi) A Member may withdraw or amend its Redemption Notice, in whole or in part, at any time prior to 5:00 p.m. New York, New York time, on the Business Day immediately prior to the Redemption Date by giving written notice (a “[Retraction Notice](#)”) to the Company (with a copy to Vivid Seats) specifying (in each case, subject to the requirements set forth in [Section 9.1\(a\)\(i\)](#)) (A) the number of withdrawn Redeemable Units, (B) the number of Redeemable Units (and corresponding number of shares of Class B Common Stock after taking into account the Exchange Rate) as to which the Redemption Notice remains in effect, if any, and (C) if the Member so determines, a new Redemption Date or any other new or revised information permitted in the Redemption Notice.

(b) Change of Control. In connection with a Change of Control, and subject to any approval of the Change of Control by the holders of Class A Common Stock and Class B Common Stock that may be required:

(i) Vivid Seats shall have the right to require each Member (other than Vivid Seats and its Subsidiaries) to effectuate a Redemption by the Company of some or all of such Member's Redeemable Units, relating to a corresponding number of shares of Class B Common Stock after taking into account the Exchange Rate (in each case, free and clear of all Liens) of such Member, in each case, in exchange for the delivery to such Member (or its designee) of a number of shares of Class A Common Stock that is equal to the product of the applicable Redeemed Unit Amount and the Exchange Rate (such Redemption, a "Change of Control Redemption"); *provided* that, if Vivid Seats elects to require such Member to redeem less than all of its outstanding Redeemable Units (and the corresponding number of shares of Class B Common Stock after taking into account the Exchange Rate), such Member's participation in the required Redemption shall be reduced *pro rata* based on ownership of Redeemable Units. For the avoidance of doubt, any Redeemable Units that are not redeemed pursuant to a Change of Control Redemption may be caused to be redeemed by the Member after the Change of Control transaction pursuant to Section 9.1(a), subject to and in accordance with the terms thereof.

(ii) The election of Vivid Seats pursuant to this Section 9.1(b) shall be at the sole discretion of Vivid Seats upon the approval thereof by a majority of the Board of Directors of Vivid Seats.

(iii) Any Redemption pursuant to this Section 9.1(b) shall be effective immediately prior to the consummation of the Change of Control (and, for the avoidance of doubt, shall not be effective if such Change of Control is not consummated) (the "Change of Control Redemption Date"). From and after the Change of Control Redemption Date, such Member shall cease to have any rights with respect to the Redeemable Units (and the corresponding number of shares of Class B Common Stock to be cancelled) that are subject to the Redemption pursuant to this Section 9.1(b) (other than the right to receive shares of Class A Common Stock pursuant to Section 9.1(b)(i)) upon compliance with its obligations under Section 9.1(c).

(iv) Vivid Seats shall provide written notice of an expected Change of Control to each Member within the earlier of (x) five (5) Business Days following the execution of the agreement with respect to such Change of Control and (y) ten (10) Business Days before the proposed date upon which the contemplated Change of Control is to be effected, indicating in such notice such information as may reasonably describe the Change of Control transaction, subject to applicable law, including the date of execution of such agreement or such proposed effective date, as applicable, the amount and types of consideration to be paid for Redeemable Units and shares of Class B Common Stock or shares of Class A Common Stock, as applicable, in the Change of Control (which consideration shall be equivalent whether paid for Redeemable Units and shares of Class B Common Stock or shares of Class A Common Stock), any election with respect to types of consideration that a holder of Redeemable Units and shares of Class B Common Stock or shares of Class A Common Stock, as applicable, shall be entitled to make in connection with the Change of Control, the percentage of total Redeemable Units and shares of Class B Common Stock or shares of Class A Common Stock, as applicable, to be transferred to the acquirer by all shareholders in the Change of Control, and the number of Redeemable Units and shares of Class B Common Stock held by each Member that Vivid Seats intends to require to be redeemed for shares of Class A Common Stock in connection with the Change of Control. Vivid Seats shall update such notice from time to time to reflect any material changes to such notice. Vivid Seats may satisfy any such notice and update requirements described in the preceding two sentences by providing such information on a Form 8-K, Schedule TO, Schedule 14D-9, Preliminary Merger Proxy on Schedule 14A, Definitive Merger Proxy on Schedule 14A or similar form filed with the SEC.

(c) Redemption Procedure on Change of Control Redemption. On or prior to the Change of Control Redemption Date, each Member shall deliver to Vivid Seats and the Company, during normal business hours at the principal executive offices of Vivid Seats and the Company, respectively: (A) a Redemption Notice, duly executed by such Member, (B) any certificates in such Member possession representing the Redeemable Units

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being surrendered by such Member, (C) any stock certificates in such Member's possession representing the corresponding number of shares of Class B Common Stock to be retired in connection with such Redemption, in accordance with Section 4.04(b) of Vivid Seats' certificate of incorporation and (D) if Vivid Seats, the Company or any redeeming Subsidiary requires the delivery of the certification contemplated by Section 9.4(b), such certification or written notice from such Member that it is unable to provide such certification.

(d) Redemption Consideration. As promptly as practicable on or after the Redemption Date or Change of Control Redemption Date, as applicable, provided the Member has satisfied its obligations under Section 9.1(a)(iii) or Section 9.1(c), as applicable, the Company or Vivid Seats shall deliver or cause to be delivered to such Member (or its designee), either certificates or evidence of book-entry shares representing the number of shares of Class A Common Stock deliverable upon the applicable Redemption, registered in the name of such Member (or its designee) or, if the Company has so elected, the Cash Payment. Notwithstanding anything set forth in this Section 9.1(d) to the contrary, to the extent the Class A Common Stock issued in the Redemption will be settled through the facilities of The Depository Trust Company, the Company or Vivid Seats will, upon the written instruction of such Member, deliver the shares of Class A Common Stock deliverable to such Member through the facilities of The Depository Trust Company to the account of the participant of The Depository Trust Company designated by such Member in the Exchange Election Notice. Upon the Member exercising its Redemption right in accordance with Section 9.1(a)(i) or the occurrence of a Change of Control Redemption, the Company or Vivid Seats shall take such actions as (A) may be required to ensure that the Member receives the shares of Class A Common Stock or the Cash Payment that such member is entitled to receive in connection with such Redemption pursuant to this Section 9.1, and (B) may be reasonably within its control that would cause such Redemption to be treated for purposes of the Tax Receivable Agreement as an "Exchange" under the Tax Receivable Agreement.

(e) Contribution by Vivid Seats. In connection with any Redemption by the Company, Vivid Seats shall contribute to the Company the shares of Class A Common Stock or Cash Payment that the Member is entitled to receive in such Redemption. Unless such Member has timely delivered a Retraction Notice as provided in Section 9.1(a)(vi), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) Vivid Seats shall make a capital contribution to the Company (in the form of the shares of Class A Common Stock or the Cash Payment that such Member is entitled to receive in such Redemption) required under this Section 9.1(e), (ii) the Company shall transfer such shares of Class A Common Stock or Cash Payment to such Member in redemption of such Member's Units in the Company, and (iii) in the case of a Redemption for Class A Common Stock and/or the Cash Payment (as applicable), the Company shall issue to Vivid Seats a number of Common Units equal to the Redeemed Unit Amount surrendered by such Member.

(f) Direct Exchange Right of Vivid Seats. Notwithstanding anything herein to the contrary, Vivid Seats may, in its sole discretion, elect to effect, on the Redemption Date, the exchange of Redeemable Units for Class A Common Stock and/or the Cash Payment (as applicable) through a direct exchange of such Redeemable Units for Class A Common Stock and/or the Cash Payment (as applicable) between the Member, on the one hand, and Vivid Seats (and/or, if designated by Vivid Seats, one or more of its Subsidiaries), on the other hand (a "Direct Exchange") (rather than contributing the Class A Common Stock and/or the Cash Payment (as applicable) to the Company for purposes of the Company redeeming the Redeemable Units in accordance with this Article IX). The applicable provisions of this Article IX shall apply to such Direct Exchange, *mutatis mutandis*, with Vivid Seats (and/or one or more of its Subsidiaries) directly acquiring the Redeemable Units, in lieu of the Company, and otherwise discharging the obligations of the Company with respect to delivery of Class A Common Stock and/or the Cash Payment (as applicable) to which the Member is entitled. Vivid Seats may, at any time prior to a Redemption Date (including after delivery of an Election Notice), deliver written notice (an "Exchange Election Notice") to the Company and the redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; *provided*, that such election is subject to the limitations set forth in this Article IX and does not unreasonably prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by Vivid Seats at any time; *provided*, that any such revocation does not unreasonably prejudice the ability of the



parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable only for all (and not less than all) of the Redeemable Units that would have otherwise been subject to a Redemption.

(g) Legends.

(i) The shares of Class A Common Stock issued upon a Redemption or Direct Exchange, other than any such shares issued in a Redemption or Direct Exchange subject to an effective registration statement under the Securities Act, shall bear a legend in substantially the following form:

THE TRANSFER OF THESE SECURITIES HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (OR OTHER APPLICABLE LAW), OR AN EXEMPTION THEREFROM.

(ii) If (A) any shares of Class A Common Stock have been sold pursuant to a registration statement that has been declared effective by the SEC, (B) all of the applicable conditions of Rule 144 are met, or (C) the legend (or a portion thereof) otherwise ceases to be applicable, Vivid Seats, upon the written request of the holder thereof, shall promptly provide such holder or its respective transferees with new certificates (or evidence of book-entry share) for securities of like tenor not bearing the provisions of the legend with respect to which the restriction has terminated. In connection therewith, such holder shall provide Vivid Seats with such information in its possession as Vivid Seats may reasonably request (which may include an opinion of counsel reasonably acceptable to Vivid Seats) in connection with the removal of any such legend.

(h) Cancellation of Class B Common Stock. Any shares of Class B Common Stock surrendered in a Redemption or Direct Exchange shall automatically be deemed cancelled without any action on the part of any Person, including Vivid Seats. Any such cancelled shares of Class B Common Stock shall no longer be outstanding, and all rights with respect to such shares shall automatically cease and terminate.

(i) Expenses. Except as otherwise agreed, Vivid Seats, the Company, any exchanging Subsidiary and the redeeming Member shall bear their own expenses in connection with the consummation of any Redemption or Direct Exchange, whether or not any such Redemption or Direct Exchange is ultimately consummated, except that Vivid Seats shall bear any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Redemption or Direct Exchange; *provided, however*, that if any shares of Class A Common Stock are to be delivered in a name other than that of the Member (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such Member) or the Cash Payment is to be paid to a Person other than the Member, then such Member or the Person in whose name such shares are to be delivered or to whom the Cash Payment is to be paid shall pay to Vivid Seats the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Redemption or Direct Exchange or shall establish to the reasonable satisfaction of Vivid Seats that such tax has been paid or is not payable.

Section 9.2 Adjustments. The Exchange Rate shall be adjusted accordingly if there is: (a) any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class B Common Stock or Common Units that is not accompanied by a substantively identical subdivision or combination of Class A Common Stock; or (b) any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class A Common Stock that is not accompanied by a substantively identical subdivision or combination of the shares of Class B Common Stock or Common Units. To the extent not reflected in an adjustment to the Exchange Rate, if there is any reclassification, reorganization, recapitalization or other similar



transaction in which the Class A Common Stock is converted or changed or exchanged into or for another security, securities or other property, then upon any subsequent Redemption, the Member shall be entitled to receive the amount of such security, securities or other property that such Member would have received if such Redemption had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization or other similar transaction, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the Class A Common Stock is converted or changed or exchanged into or for another security, securities or other property, this [Section 9.2](#) shall continue to be applicable, *mutatis mutandis*, with respect to such security or other property.

**Section 9.3 Class A Common Stock to be Issued.**

(a) Vivid Seats shall at all times reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be sufficient to effect the conversion of all outstanding Common Units; *provided, however*, that nothing contained herein shall be construed to preclude Vivid Seats from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of unencumbered purchased shares of Class A Common Stock (which may or may not be held in the treasury of Vivid Seats or any subsidiary thereof).

(b) Vivid Seats has taken and will take all such steps as may be required to cause to qualify for exemption under Rule 16b-3(d) or (e), as applicable, under the Exchange Act, and be exempt for purposes of Section 16(b) under the Exchange Act, any acquisitions or dispositions of equity securities of Vivid Seats (including derivative securities with respect thereto) and any securities that may be deemed to be equity securities or derivative securities of Vivid Seats for such purposes that result from the transactions contemplated by this Agreement, by each director or officer of Vivid Seats (including directors-by-deputization) who may reasonably be expected to be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Vivid Seats upon the registration of any class of equity security of Vivid Seats pursuant to Section 12 of the Exchange Act (with the authorizing resolutions specifying the name of each such officer or director whose acquisition or disposition of securities is to be exempted and the number of securities that may be acquired and disposed of by each such Person pursuant to this Agreement).

(c) If any Takeover Law or other similar law or regulation becomes or is deemed to become applicable to this Agreement or any of the transactions contemplated hereby, Vivid Seats shall use its reasonable best efforts to render such law or regulation inapplicable to all of the foregoing.

(d) Vivid Seats covenants that all shares of Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable and not subject to any preemptive, participation or similar right of stockholders to subscribe for or acquire equity interests of Vivid Seats or to any right of first refusal or other right in favor of any Person.

**Section 9.4 Withholding; Certification of Non-Foreign Status.**

(a) If Vivid Seats or the Company shall be required to withhold any amounts by reason of any U.S. federal, state, local or foreign tax rules or regulations in respect of any Redemption or Direct Exchange, Vivid Seats or the Company, as the case may be, shall be entitled to take such action as it deems appropriate in order to ensure compliance with such withholding requirements, including, at its option, withholding shares of Class A Common Stock with a fair market value equal to the minimum amount of any taxes that Vivid Seats or the Company, as the case may be, may be required to withhold with respect to such Redemption or Direct

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Exchange. To the extent that amounts are (or property is) so withheld and paid over to the appropriate taxing authority, such withheld amounts (or property) shall be treated for all purposes of this Agreement as having been paid (or delivered) to the Member.

(b) Notwithstanding anything to the contrary herein, each of Vivid Seats and the Company may, in its discretion, require that a Member deliver to Vivid Seats or the Company, as the case may be, a duly completed and executed IRS Form W-9) (or other withholding form or certification) prior to a Redemption or Direct Exchange. In the event Vivid Seats or the Company has required delivery of such form or certification but such Member does not provide such form or certification, Vivid Seats or the Company, as the case may be, shall nevertheless deliver or cause to be delivered to such Member the Class A Common Stock or the Cash Payment in accordance with [Section 9.1](#), but subject to withholding as provided in [Section 9.4\(a\)](#).

Section 9.5 **Tax Treatment.** Unless otherwise required by applicable law, the parties hereto acknowledge and agree that any Redemption or Direct Exchange with the Company or Vivid Seats shall be treated as a direct exchange between Vivid Seats and such Member for U.S. federal and applicable state and local income tax purposes. The parties hereto intend to treat any Redemption or Direct Exchange consummated hereunder as a taxable sale of the Redeemable Units and Class B Common Stock (if any) by the Member to Vivid Seats for U.S. federal and applicable state and local income tax purposes except as otherwise mutually agreed to in writing by such Member and Vivid Seats and no party hereto shall take a position inconsistent with such intended tax treatment on any tax return, amendment thereof or any other communication with a taxing authority, in each case unless otherwise required by a “determination” within the meaning of Section 1313 of the Code.

Section 9.6 **PTP Tax Consequences.** Notwithstanding anything to the contrary herein, if the Board, after consultation with its outside legal counsel and tax advisor, determines in good faith that interests in the Company do not meet the requirements of Treasury Regulation Section 1.7704-1(h) (or other provisions of those Regulations as determined by the Board in its sole discretion) or that any Transfer, Redemption or Direct Exchange could (as determined in the reasonable discretion of the Board exercised in good faith) cause the Company to be treated as a “publicly traded partnership” under Section 7704 of the Code, the Company may impose such restrictions on such Transfers, Redemptions, and/or Direct Exchanges) as the Company may reasonably determine to be necessary or advisable so that the Company is not treated as a “publicly traded partnership” under Section 7704 of the Code.

Section 9.7 **Distributions.** No Redemption or Direct Exchange will impair the right of a Member to receive any distribution for periods ending on or prior to the Redemption Date for such Redemption or Direct Exchange (but for which payment had not yet been made with respect to the Redeemable Units in question at the time the Redemption or Direct Exchange is consummated); *provided* that, for purposes of this [Section 9.7](#), a Member’s right to receive its *pro rata* portion of any distribution by the Company in respect of such periods shall not be deemed impaired to the extent that the Company has not paid Vivid Seats its *pro rata* portion of such distribution prior to the consummation of the applicable Redemption or Direct Exchange.

Section 9.8 **Blocker Merger Transaction Cooperation.** From and after the First Redemption Time, if requested by any holder of Redeemable Units, the Board and the Company shall work together in good faith with any such requesting Unitholder to structure a transaction that provides for such Unitholder (or an Affiliate thereof) to, in lieu of exercising exchange rights applicable to all or a portion of the Redeemable Units held (directly or indirectly) by such Unitholder, cause an entity (a “[Blocker Corporation](#)”) that (i) is classified as a corporation for U.S. federal income tax purposes, (ii) has no material assets other than Redeemable Units, (iii) has no liabilities other than any liabilities directly relating to the Redeemable Units held by such corporation, (iv) does not have, and has never engaged in, any activities other than holding Redeemable Units, and (v) was formed sufficiently in advance of the Blocker Merger Transaction (as defined below), to be merged with and into Vivid Seats or with or into one or more Subsidiaries of Vivid Seats that is treated as a corporation or an entity that is disregarded as separate from Vivid Seats for U.S. federal income tax purposes (any such merger, or any substantially similar transaction pursuant to which the equityholder of the Blocker Corporation receives Common

Stock in exchange for all of the interests in the Blocker Corporation, a “Blocker Merger Transaction”). Such Unitholder shall notify the Board and the Company in writing of any request by the Unitholder to implement a Blocker Merger Transaction, and the Board, the Company and the applicable Unitholder shall work together to structure any such Blocker Merger Transaction in a manner that qualifies as a “reorganization” within the meaning of Section 368(a) of the Code and shall work together in good faith to draft definitive documentation with respect to any such Blocker Merger Transaction. Such definitive documentation shall (A) include customary representations and customary indemnification, including customary indemnification with respect to any taxes of or with respect to the Blocker Corporation, (B) provide for the rights, if any, the Unitholder may have under the Tax Receivable Agreement following any such Blocker Merger Transaction, and (C) require that the equityholders of such Blocker Corporation shall bear all costs and expenses (excluding Taxes except to the extent provided in clause (A)) in connection with such Blocker Merger Transaction. Notwithstanding the foregoing, in no event shall any Blocker Merger Transaction be required if such Blocker Merger Transaction would reasonably be expected to result in adverse tax consequences to the Company or any Subsidiary thereof, Vivid Seats or any Subsidiary thereof, or any other Unitholder.

## ARTICLE X RESIGNATION OF UNITHOLDERS

Section 10.1 **Resignation of Unitholders.** No Unitholder shall have the power or right to resign from the Company prior to the dissolution and winding up of the Company pursuant to Article XI, without the prior written consent of the Board (which consent may be withheld by the Board in its sole discretion), except as otherwise expressly permitted by this Agreement. Upon a Transfer of all of a Unitholder’s Units in a Transfer permitted by this Agreement, and (if applicable) the Equity Agreements, such Unitholder shall cease to be a Unitholder. Notwithstanding that payment on account of a resignation may be made after the effective time of such resignation, any completely resigning Unitholder will not be considered a Unitholder for any purpose after the effective time of such complete resignation, and, in the case of a partial resignation, such Unitholder’s Capital Account (and corresponding voting and other rights) shall be reduced for all other purposes hereunder upon the effective time of such partial resignation.

## ARTICLE XI DISSOLUTION AND LIQUIDATION

Section 11.1 **Dissolution.** The Company shall not be dissolved by the admission of Additional Members or Substituted Members. The Company shall dissolve, and its affairs shall be wound up upon the first of the following to occur:

- (a) at the election of the Board;
- (b) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Delaware Act; or
- (c) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act.

Except as otherwise set forth in this Article XI the Company is intended to have perpetual existence. An Event of Withdrawal, in and of itself, shall not cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement. Bankruptcy (as defined in Sections 18-101(1) and 18-304 of the Delaware Act) shall not cause a Member to cease to be a member of the Company.

Section 11.2 **Liquidation and Termination.** On the dissolution of the Company, the Board shall act as liquidator or may appoint one or more representatives, Members or other Persons as liquidator(s). The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as the Company's expense. Until final distribution, the liquidators shall continue to operate the Company properties with all of the power and authority of the Board. The steps to be accomplished by the liquidators are as follows:

(a) In accordance with Section 18-804 of the Delaware Act, the liquidators shall pay, satisfy or discharge from the Company's funds all of the debts, liabilities and obligations of the Company (including all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine).

(b) After satisfaction of all liabilities of the Company in accordance with [Section 11.2\(a\)](#) above, the liquidators shall (i) determine the Fair Market Value (the "[Liquidation FMV](#)") of the Company's remaining assets (the "[Liquidation Assets](#)") in accordance with [Article XI](#) hereof, (ii) determine the amounts to be distributed to each Unitholder in accordance with [Section 4.1](#), and (iii) deliver to each Unitholder a statement (the "[Liquidation Statement](#)") setting forth the Liquidation FMV and the amounts and recipients of such Distributions, which Liquidation Statement shall be final and binding on all Unitholders.

(c) As soon as the Liquidation FMV and the proper amounts of Distributions have been determined in accordance with [Section 11.2\(b\)](#) above, the liquidators shall promptly distribute the Company's Liquidation Assets to the holders of Units in accordance with [Section 4.1\(b\)](#) above. In making such distributions, the liquidators shall allocate each type of Liquidation Assets (i.e., cash or cash equivalents, preferred or common equity securities, etc.) among the Unitholders ratably based upon the aggregate amounts to be distributed with respect to the Units held by each such holder; *provided that* the liquidators may allocate each type of Liquidation Assets so as to give effect to and take into account the relative priorities of the different Units; *provided further that*, in the event that any securities are part of the Liquidation Assets, each Unitholder that is not an "accredited investor" as such term is defined under the Securities Act may, in the sole discretion of the Board, receive, and hereby agrees to accept, in lieu of such securities, cash consideration with an equivalent value to such securities as determined by the Board. Any non-cash Liquidation Assets will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with [Section 4.2](#) and [Section 4.3](#). If any Unitholder's Capital Account is not equal to the amount to be distributed to such Unitholder pursuant to [Section 11.2\(b\)](#), Profits and Losses for the Fiscal Year in which the Company is wound up shall be allocated among the Unitholders in such a manner as to cause, to the extent possible, each Unitholder's Capital Account to be equal to the amount to be distributed to such Unitholder pursuant to [Section 11.2\(b\)](#). The distribution of cash and/or property to a Unitholder in accordance with the provisions of this [Section 11.2\(b\)](#) constitutes a complete return to the Unitholder of its Capital Contributions and a complete distribution to the Unitholder of its interest in the Company and all the Company property and, to the fullest extent permitted by law, constitutes a compromise to which all Unitholders have consented within the meaning of the Delaware Act. To the extent that a Unitholder returns funds to the Company, to the fullest extent permitted by law, it has no claim against any other Unitholder for those funds.

Section 11.3 **Securityholders Agreement.** To the extent that Units or other Equity Securities of any Subsidiary are distributed to any Unitholders and unless otherwise agreed to by the Board, such Unitholders hereby agree to enter into a securityholders agreement with such Subsidiary and each other Unitholder which contains rights and restrictions in form and substance similar to the provisions and restrictions set forth herein (including in [Article VIII](#)).

Section 11.4 **Cancellation of Certificate.** On completion of the distribution of the Company's assets as provided herein, the Board (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to

this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company, and upon the filing of the certificate of cancellation of the Certificate, the Company shall be terminated (and the Company shall not be terminated prior to such time). The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this [Section 11.4](#).

Section 11.5 **Reasonable Time for Winding Up**. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to [Section 11.2](#) in order to minimize any losses otherwise attendant upon such winding up.

Section 11.6 **Return of Capital**. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Unitholders (it being understood that any such return shall be made solely from the Company assets).

Section 11.7 **Hart-Scott-Rodino**. In the event the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “[HSR Act](#)”) is applicable to any Unitholder, the dissolution of the Company shall not be consummated until such time as the applicable waiting period (and extensions thereof) under the HSR Act have expired or otherwise been terminated with respect to each such Unitholder.

## ARTICLE XII GENERAL PROVISIONS

Section 12.1 **Power of Attorney**. Each Unitholder hereby constitutes and appoints Vivid Seats and the liquidators, if any and as applicable, and their respective designees, with full power of substitution, as his, her or its true and lawful agent and attorney-in-fact, with full power and authority in his, her or its name, place and stead, to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (to the same extent such Person could take such action): (a) this Agreement, all certificates and other instruments and all amendments hereof or thereof in accordance with the terms hereof which Vivid Seats deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property or as otherwise permitted herein; (b) all instruments, agreements, amendments or other documents which Vivid Seats deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents which Vivid Seats and/or the liquidators deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including a certificate of cancellation; and (d) all instruments relating to the admission, withdrawal or substitution of any Unitholder pursuant to [Article VIII](#) or [Article X](#). The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Unitholder and the Transfer of all or any portion of his, her or its Units and shall extend to such Unitholder’s heirs, successors, permitted assigns and personal representatives.

Section 12.2 **Amendments**. This Agreement may be amended (including, for purposes of this [Section 12.2](#), any amendment effected directly or indirectly by way of a merger or consolidation of the Company) or waived, in whole or in part, by the Board; *provided, however*, that to the extent any amendment or waiver, including any amendment or waiver of the Exhibits attached hereto, would disproportionately and adversely affect the rights of any Member of a class compared with the rights of any other Member of such class, such amendment or waiver may only be made by the Board upon the prior written consent of such disproportionately and adversely affected Member.

Section 12.3 **Title to the Company Assets**. The Company’s assets shall be deemed to be owned by the Company as an entity, and no Unitholder, individually or collectively, shall have any ownership interest in such assets or any portion thereof. Legal title to any or all of such assets may be held in the name of the Company or

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one or more nominees, as the Board may determine. The Board hereby declares and warrants that any Company assets for which legal title is held in the name of any nominee shall be held in trust by such nominee for the use and benefit of the Company in accordance with the provisions of this Agreement. All the Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such assets is held.

Section 12.4 **Remedies.** Each Unitholder and the Company shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

Section 12.5 **Successors and Assigns.** All covenants and agreements contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns, whether so expressed or not.

Section 12.6 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein or if such term or provision could be drawn more narrowly so as not to be illegal, invalid, prohibited or unenforceable in such jurisdiction, it shall be so narrowly drawn, as to such jurisdiction, without invalidating the remaining terms and provisions of this Agreement or affecting the legality, validity or enforceability of such term or provision in any other jurisdiction.

Section 12.7 **Counterparts; Binding Agreement.** This Agreement may be executed simultaneously in two or more separate counterparts, any one of which need not contain the signatures of more than one party, but each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto. This Agreement and all of the provisions hereof shall be binding upon and effective as to each Person who (a) executes this Agreement in the appropriate space provided in the signature pages hereto notwithstanding the fact that other Persons who have not executed this Agreement may be listed on the signature pages hereto and (b) may from time to time become a party to this Agreement by executing a counterpart of or joinder to this Agreement.

Section 12.8 **Descriptive Headings; Interpretation.** The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word “including” in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Whenever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the words “or,” “either” and “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and, to the fullest extent permitted by law, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict.

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Section 12.9 **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 12.10 **Addresses and Notices.** All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) telecopied to the recipient, or delivered by means of electronic mail (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day) if telecopied/emailed before 5:00 p.m. New York, New York time on a Business Day, and otherwise on the next Business Day, or (c) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to the address for such recipient set forth in the Company's books and records, or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

Section 12.11 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in the Company's Profits, Losses, Distributions, capital or property other than as a secured creditor. Notwithstanding the foregoing, each of the Indemnitees are intended third party beneficiaries of Section 6.1(b) and shall be entitled to enforce such provision (as it may be in effect from time to time).

Section 12.12 **No Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 12.13 **Further Action.** The parties agree to execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 12.14 **Entire Agreement.** This Agreement and the other Transaction Documents embody the complete agreement and understanding among the parties with respect to the subject matter herein and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 12.15 **Delivery by Electronic Means.** This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission in portable document format (pdf) or comparable electronic transmission, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or pdf electronic transmission or comparable electronic transmission to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

Section 12.16 **Certain Acknowledgments.** This Agreement shall be considered for all purposes as having been prepared through the joint efforts of the parties. No presumption shall apply in favor of any party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof based on the



preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Member and Unitholder acknowledges that it/he/she is entitled to and has been afforded the opportunity to consult legal counsel of its choice regarding the terms, conditions and legal effects of this Agreement, as well as the advisability and propriety thereof. Each Member and Unitholder further acknowledges that having so consulted with legal counsel of its choosing, such Member or Unitholder hereby waives any right to raise or rely upon the lack of representation or effective representation in any future proceedings or in connection with any future claim resulting from this Agreement or the formation of the Company. THE COMPANY, THE MEMBERS AND THE UNITHOLDERS ACKNOWLEDGE THAT LATHAM & WATKINS LLP HAS ONLY REPRESENTED THE COMPANY WITH RESPECT TO THE NEGOTIATION AND PREPARATION OF THIS AGREEMENT, AND HAS NOT REPRESENTED THE MEMBERS OR THE UNITHOLDERS WITH RESPECT TO SUCH MATTERS.

Section 12.17 **Consent to Jurisdiction; WAIVER OF TRIAL BY JURY.**

(a) **Consent to Jurisdiction.** Each Unitholder irrevocably submits to the exclusive jurisdiction of the United States District Court for the State of Delaware and the state courts of the State of Delaware for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each Unitholder further agrees that service of any process, summons, notice or document by United States certified or registered mail (in each such case, prepaid return receipt requested) to such Unitholder's respective address set forth in the Company's books and records or such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party shall be effective service of process in any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each Unitholder irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the United States District Court for the State of Delaware or the state courts of the State of Delaware and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

(b) **WAIVER OF TRIAL BY JURY.** BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, EACH PARTY TO THIS AGREEMENT (INCLUDING THE COMPANY) HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE BETWEEN OR AMONG ANY OF THE PARTIES HERETO, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE RELATIONSHIPS ESTABLISHED AMONG THE PARTIES HEREUNDER.

Section 12.18 **Representations and Warranties.** By execution of this Agreement, each Member severally represents and warrants as follows:

(a) Such Member has full legal right, power, and authority to deliver this Agreement and the other Transaction Documents and to perform such Member's obligations hereunder and thereunder;

(b) This Agreement and the other Transaction Documents constitute the legal, valid, and binding obligation of such Member enforceable in accordance with its respective terms, except as the enforcement thereof may be limited by bankruptcy and other laws of general application relating to creditors' rights or general principles of equity;



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(c) Neither this Agreement nor the other Transaction Documents violate, conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default or an event of default under any other agreement of which such Member is a party; and

(d) Such Member's investment in Units in the Company is made for such Member's own account for investment purposes only and not with a view to the resale or distribution of such Units.

Section 12.19 **Tax Receivable Agreement**. The Tax Receivable Agreement shall be treated as part of this Agreement as described in Section 761(c) of the Code, and Treasury Regulations Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) with respect to payments to a Member with respect to an Exchange (as defined in the Tax Receivable Agreement) by such Member.

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Second Amended and Restated Limited Liability Company Agreement as of the date first written above.

HOYA INTERMEDIATE, LLC

By: \_\_\_\_\_  
Name:  
Title:

VIVID SEATS INC., as a Member

By: \_\_\_\_\_  
Name:  
Title:

HOYA TOPCO, LLC, as a Member

By: \_\_\_\_\_  
Name:  
Title:

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Joinder

The undersigned hereby agrees to become a party to the Second Amended and Restated Limited Liability Company Agreement of Hoya Intermediate, LLC, a Delaware limited liability company, dated as of [●], 2021 (the “Agreement”), and agrees to be bound by the terms and conditions of the Agreement as a Member.

MEMBER:

[●]

By: \_\_\_\_\_

Its:

Address for Notices:

[●]

[●]

[●]

[●]

**The Companies Act (As Revised) of the Cayman Islands**

**Plan of Merger**

This plan of merger (the “**Plan of Merger**”) is made on [*insert date*] between Vivid Seats Inc. (the “**Surviving Company**”) and Horizon Acquisition Corporation (the “**Merging Company**”).

Whereas the Merging Company is a Cayman Islands exempted company and is entering into this Plan of Merger pursuant to the provisions of Part XVI of the Companies Act (As Revised) (the “**Statute**”).

Whereas the Surviving Company is a Delaware corporation and is entering into this Plan of Merger pursuant to the provisions of Part XVI of the Statute.

Whereas the directors of the Merging Company and the directors of the Surviving Company deem it desirable and in the commercial interests of the Merging Company and the Surviving Company, respectively, that the Merging Company be merged with and into the Surviving Company and that the undertaking, property and liabilities of the Merging Company vest in the Surviving Company (the “**Merger**”).

Terms not otherwise defined in this Plan of Merger shall have the meanings given to them under the Transaction Agreement dated April 21, 2021 and made between, amongst others, the Surviving Company and the Merging Company (the “**Merger Agreement**”) a copy of which is annexed at Annexure 1 hereto.

Now therefore this Plan of Merger provides as follows:

- 1 The constituent companies (as defined in the Statute) to this Merger are the Surviving Company and the Merging Company.
- 2 The surviving company (as defined in the Statute) is the Surviving Company.
- 3 The registered office of the Surviving Company is [*insert foreign address*] and the registered office of the Merging Company is c/o Maples Corporate Services Limited of PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands.
- 4 Immediately prior to the Effective Date (as defined below), the share capital of the Surviving Company will be US\$44,100 divided into 400,000,000 Class A ordinary shares of a par value of US\$0.0001 each, 40,000,000 Class B ordinary shares of a par value of US\$0.0001 each and 1,000,000 Preference shares of a par value of US\$0.0001 each and the Surviving Company will have 100 shares of common stock, par value US\$0.01, in issue.
- 5 Immediately prior to the Effective Date (as defined below), the share capital of the Merging Company will be US\$44,100 divided into 400,000,000 Class A ordinary shares of a par value of US\$0.0001 each, 40,000,000 Class B ordinary shares of a par value of US\$0.0001 each and 1,000,000 Preference shares of a par value of US\$0.0001 each and the Merging Company will have [\*] Class A ordinary Shares and [\*] Class B ordinary shares in issue.
- 6 The date on which it is intended that the Merger is to take effect is the date that this Plan of Merger is registered by the Registrar in accordance with section 233(13) of the Statute (the “**Effective Date**”).
- 7 The terms and conditions of the Merger, including the manner and basis of converting shares in each constituent company into shares in the Surviving Company, are set out in the Merger Agreement in the form annexed at Annexure 1 hereto.

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- 8 The rights and restrictions attaching to the shares in the Surviving Company are set out in the v of the Surviving Company in the form annexed at Annexure 2 hereto. The Certificate of Incorporation and Bylaws immediately prior to the Merger shall be its Certificate of Incorporation and Bylaws after the Merger.
- 9 There are no amounts or benefits which are or shall be paid or payable to any director of either constituent company or the Surviving Company consequent upon the Merger.
- 10 The Merging Company has granted no fixed or floating security interests that are outstanding as at the date of this Plan of Merger.
- 11 The names and addresses of each director of the surviving company (as defined in the Statute) are:
- 11.1 *[Insert name of Director]* of *[Insert personal address of Director]*;
- 11.2 *[Insert name of Director]* of *[Insert personal address of Director]*; and
- 11.3 *[repeat for all Directors of the surviving company (i.e. the merged entity)]*.
- 12 This Plan of Merger has been approved by the board of directors of the Merging Company pursuant to section 233(3) of the Statute.
- 13 This Plan of Merger has been authorised by the shareholders of the Merging Company pursuant to section 233(6) of the Statute by way of resolutions passed at an extraordinary general meeting of the Merging Company.
- 14 At any time prior to the Effective Date, this Plan of Merger may be:
- 14.1 terminated by the board of directors of either the Surviving Company or the Merging Company;
- 14.2 amended by the board of directors of both the Surviving Company and the Merging Company to:
- (a) change the Effective Date provided that such changed date shall not be a date later than the ninetieth day after the date of registration of this Plan of Merger with the Registrar of Companies; and
- (b) effect any other changes to this Plan of Merger which the directors of both the Surviving Company and the Merging Company deem advisable, provided that such changes do not materially adversely affect any rights of the shareholders of the Surviving Company or the Merging Company, as determined by the directors of both the Surviving Company and the Merging Company, respectively.
- 15 This Plan of Merger may be executed in counterparts.
- 16 This Plan of Merger shall be governed by and construed in accordance with the laws of the Cayman Islands.

**In witness whereof** the parties hereto have caused this Plan of Merger to be executed on the day and year first above written.

**SIGNED** by \_\_\_\_\_  
Duly authorised for  
and on behalf of  
**Vivid Seats Inc.**

)

)

)

\_\_\_\_\_  
Director<sup>1</sup>

**SIGNED** by \_\_\_\_\_  
Duly authorised for  
and on behalf of  
**Horizon Acquisition Corporation**

)

)

)

\_\_\_\_\_  
Director<sup>2</sup>

<sup>1</sup> Must be signed by a Director.

<sup>2</sup> Must be signed by a Director.

**Annexure 1**  
**Transaction Agreement**

Annex K-3



Annexure 2  
Certificate of Incorporation and Bylaws  
Annex K-4

**AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of [●], 2021, is made and entered into by and among Vivid Seats, Inc., a Delaware corporation (the “**Company**”), Hoya Topco, LLC, a Delaware limited liability company (“**Topco**”), and Horizon Sponsor, LLC, a Delaware limited liability company (the “**Sponsor**,” and, together with Topco and any person or entity who is identified on the signature pages hereto as a “Holder” or hereafter becomes a party to this Agreement pursuant to Section 5.2 of this Agreement, the “**Holders**” and each, a “**Holder**”).

**RECITALS**

**WHEREAS**, Horizon Acquisition Corporation, a Cayman Islands exempted company and predecessor to the Company (“**Horizon**”), and the Sponsor are party to that certain Registration and Shareholder Rights Agreement, dated as of August 25, 2020 (the “**Original Agreement**”);

**WHEREAS**, the Company, Topco, the Sponsor, Horizon and Hoya Intermediate, LLC, a Delaware limited liability company (“**Intermediate**”) have entered into that certain Transaction Agreement, dated as of April 21, 2021 (as it may be amended or supplemented from time to time, the “**Transaction Agreement**”);

**WHEREAS**, pursuant to the Transaction Agreement, Horizon merged with and into the Company, with Horizon ceasing to exist as a separate corporation and the Company surviving the merger as the surviving corporation;

**WHEREAS**, pursuant to the amended and restated certificate of incorporation of the Company (as may be amended and restated from time to time, the “**Company Certificate of Incorporation**”), the Company is authorized to issue the following classes of stock: (a) Class A Common Stock, par value \$0.0001 per share (the “**Class A Common Stock**”), (b) Class B Common Stock, par value \$0.0001 per share and (c) Preferred Stock, par value \$0.0001 per share;

**WHEREAS**, simultaneously with the closing of its initial public offering, Horizon issued and sold certain of its redeemable private placement warrants to purchase Class A ordinary shares of Horizon, par value \$0.0001 per share (the “**Class A Ordinary Shares**”), to the Sponsor or its Affiliates as part of Horizon’s private placement units (the “**Private Placement Warrants**”);

**WHEREAS**, Horizon and Sponsor have entered into that certain Exchange Agreement, dated as of April 21, 2021 (as it may be amended or supplemented from time to time, the “**Exchange Agreement**”) pursuant to which, among other things, effective prior to the Merger, Sponsor irrevocably surrendered to Horizon 13,599,608 Class B ordinary shares of Horizon, par value \$0.0001 per share (the “**Class B Ordinary Shares**”), in exchange for (a) warrants to purchase 17,000,000 Class A Ordinary Shares at an exercise price of \$10.00 per share (the “**New \$10.00 Exercise Warrants**”), (b) warrants to purchase 17,000,000 Class A Ordinary Shares at an exercise price of \$15.00 per share (the “**New \$15.00 Exercise Warrants**” and, together with the Private Placement Warrants and the New \$10.00 Exercise Warrants, the “**Warrants**”) and (c) 50,000 Class A Ordinary Shares;

**WHEREAS**, upon the Effective Time, each Class A Ordinary Share was converted into one share of Class A Common Stock, as set forth in the Transaction Agreement, and each Warrant issued and outstanding immediately prior to the Effective Time became a warrant exercisable to purchase shares of Class A Common Stock in accordance with the terms of the applicable warrant agreement;

**WHEREAS**, upon the closing of the Transactions, certain investors (collectively, the “**PIPE Investors**”) purchased an aggregate of 22,500,000 shares of Class A Common Stock in transactions exempt from registration under the Securities Act (as defined below) pursuant to certain subscription agreements, each dated as of April 21, 2021, and entered into by Horizon and each of the PIPE Investors (each, a “**Subscription Agreement**” and, collectively, the “**Subscription Agreements**”);

**WHEREAS**, pursuant to the Second Amended and Restated Limited Liability Company Agreement of Intermediate (“**Second A&R LLCA**”), Intermediate has provided Topco with a redemption right pursuant to which Topco may redeem its Intermediate Common Units (as defined below) for cash or, at the option of the Board of Managers of Intermediate, exchange Intermediate Common Units for an equal number of shares of Class A Common Stock upon the terms and subject to the conditions set forth in the Second A&R LLCA and the Company Certificate of Incorporation; and

**WHEREAS**, in connection with the consummation of the transactions described above, the Company (as successor to Horizon) and the Sponsor desire to amend and restate the Original Agreement in its entirety as set forth herein, and the Company and the Holders desire to enter into this Agreement, pursuant to which the Company shall grant the Holders certain registration rights with respect to certain securities of the Company, as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the representations, covenants and agreements contained herein, and certain 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:

## **ARTICLE I** **DEFINITIONS**

1.1 **Definitions.** Capitalized terms used herein but not defined in this Agreement shall have the meanings ascribed to them in the Transaction Agreement. The terms defined in this **Article I** shall, for all purposes of this Agreement, have the respective meanings set forth below:

“**Action**” means any claim, action, suit, charge, audit, examination, assessment, arbitration, mediation or inquiry, or any proceeding or investigation, by or before any Governmental Authority.

“**Adverse Disclosure**” means any public disclosure of material non-public information, which disclosure, in the good faith judgment of the chief executive officer or principal financial officer of the Company, after consultation with counsel to the Company, (a) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (b) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (c) as to which the Company has a bona fide business purpose for not making such information public.

“**Affiliate**” means, with respect to any person, any other person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with, such person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

“**Agreement**” has the meaning given in the Preamble hereto.

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**“Automatic Shelf Registration Statement”** has the meaning set forth in Rule 405 promulgated by the Commission pursuant to the Securities Act.

**“Board”** means the board of directors of the Company.

**“Class A Common Stock”** has the meaning given in the Recitals hereto.

**“Closing Date”** means [●], 2021.

**“Commission”** means the Securities and Exchange Commission.

**“Company”** has the meaning given in the Preamble hereto and includes the Company’s successors by recapitalization, merger, consolidation, spin-off, reorganization or similar transaction.

**“Company Certificate of Incorporation”** has the meaning given in the Recitals hereto.

**“Demanding Holder”** has the meaning given in [subsection 2.1.3](#).

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

**“Form S-1 Shelf”** has the meaning given in [subsection 2.1.1](#).

**“Form S-3 Shelf”** has the meaning given in [subsection 2.1.1](#).

**“Governmental Authority”** means any federal, national, state, provincial or municipal government, or any political subdivision thereof, and any agency, commission, department, board, bureau, official, minister, arbitral body (public or private), tribunal or court, whether national, state, provincial, local, foreign or multinational, exercising executive, legislative, judicial, regulatory or administrative functions of a nation, state, province or municipal government, or any political subdivision thereof, including any authority having governmental or quasi-governmental powers, domestic or foreign.

**“Holders”** has the meaning given in the Preamble hereto, for so long as such person or entity holds any Registrable Securities.

**“Holder Information”** has the meaning given in [subsection 4.1.2](#).

**“Horizon”** has the meaning given in the preamble hereto.

**“Intermediate”** has the meaning given in the Recitals hereto.

**“Intermediate Common Units”** means the common units of Intermediate.

**“Lock-Up Period”** shall mean the period beginning on the Closing Date and ending twelve (12) months following the Closing Date.

**“Maximum Number of Securities”** has the meaning given in [subsection 2.1.4](#).

**“Minimum Takedown Threshold”** has the meaning given in [subsection 2.1.3](#).

**“Misstatement”** means an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus, or necessary to make the statements in a Registration Statement or Prospectus, in the light of the circumstances under which they were made, not misleading.

**“Original Agreement”** has the meaning given in the Recitals hereto.

**“Permitted Transferee”** means, in the case of any Holder, a person to whom, or entity to which, Registrable Securities are transferred by such Holder; provided that (a) such transfer does not violate the Company’s governing documents, or any agreements between such Holder and the Company or any of the Company’s subsidiaries and (b) such transferee shall only be a Permitted Transferee if and to the extent the transferor designates the transferee as a Permitted Transferee entitled to rights hereunder pursuant to subsection 5.2.3.

**“Piggyback Registration”** has the meaning given in subsection 2.2.1.

**“PIPE Investors”** has the meaning given in the Recitals hereto.

**“Prospectus”** means the prospectus included in any Registration Statement, (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance on Rules 430A or 430B under the Securities Act or any successor rule thereto), as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

**“Registrable Security”** means (a) any outstanding shares of Class A Common Stock held by a Holder immediately following the Closing (which shall include all shares of Class A Common Stock issuable upon the exchange of Intermediate Common Units (including Intermediate Common Units issued in the future pursuant to the exercise of any Topco Intermediate Warrants) outstanding on the date of this Agreement or upon the exercise of any Warrants outstanding on the date of this Agreement and all shares of Class A Common Stock originally issued as Class A Ordinary Shares pursuant to the Exchange Agreement and later converted into Class A Common Stock, but exclude any security received pursuant to an incentive plan adopted by the Company or its subsidiaries on or after the Closing Date); (b) any Warrants held by a Holder immediately following the Closing; (c) any shares of Class A Common Stock issued by the Company to a Holder in connection with the exchange of Intermediate Common Units acquired by a Holder following the date hereof; (d) any outstanding shares of Class A Common Stock or warrants to purchase shares of Class A Common Stock (including any shares of Class A Common Stock issued or issuable upon the exercise of any such warrant) of the Company acquired by a Holder following the date hereof to the extent that such securities are “restricted securities” (as defined in Rule 144) or are otherwise held by an “affiliate” (as defined in Rule 144) of the Company; and (e) any other equity security of the Company or any of its subsidiaries issued or issuable with respect to any securities referenced in clause (a), (b), (c) or (d) above by way of a stock dividend or stock split or in connection with a conversion, distribution, exchange, reclassification, recapitalization, merger, consolidation, spin-off, reorganization or similar transaction; provided, however, that, as to any particular Registrable Security, such securities shall cease to constitute Registrable Securities upon the earliest to occur of: (i) the date on which such securities have been sold, transferred, disposed of or exchanged pursuant to an effective Registration Statement, pursuant to Rule 144 under the Securities Act or any other exemption from registration under the securities laws of the United States; and (ii) the date on which such securities cease to be outstanding. For the avoidance of doubt, while Intermediate Common Units may constitute Registrable Securities, under no circumstances shall the Company be obligated to register Intermediate Common Units, and only shares of Class A Common Stock issuable upon redemption or exchange of Intermediate Common Units will be registered.

**“Registration”** means a registration, including any related Shelf Takedown, effected by preparing and filing a registration statement, prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

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**“Registration Expenses”** means the out-of-pocket expenses of a Registration, including, without limitation, the following:

- (a) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc.) and any securities exchange on which the Class A Common Stock is then listed;
- (b) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);
- (c) printing, messenger, telephone and delivery expenses;
- (d) reasonable fees and disbursements of counsel for the Company;
- (e) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration; and
- (f) reasonable fees and expenses of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders in an Underwritten Offering.

**“Registration Statement”** means any registration statement that covers the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all material incorporated by reference in such registration statement.

**“Requesting Holder”** means any Holder requesting piggyback rights pursuant to this Agreement with respect to an Underwritten Shelf Takedown.

**“Second A&R LLCA”** has the meaning given in the Recitals hereto.

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

**“Shelf”** has the meaning given in subsection 2.1.1.

**“Shelf Registration”** means a registration of securities pursuant to a registration statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

**“Shelf Takedown”** means an Underwritten Shelf Takedown or any proposed transfer or sale using a Registration Statement, including a Piggyback Registration.

**“Sponsor”** has the meaning given in the Preamble hereto.

**“Stockholders’ Agreement”** means that certain Stockholders’ Agreement, dated as of [•], 2021, by and among the Sponsor, Topco and the Company.

**“Subscription Agreements”** has the meaning given in the Recitals hereto.

**“Subsequent Shelf Registration”** has the meaning given in subsection 2.1.2.

**“Topco”** has the meaning given in the Preamble hereto.

**“Topco Intermediate Warrants”** means warrants to purchase (i) 3,000,000 Intermediate Common Units at an exercise price of \$10.00 per share and (ii) 3,000,000 Intermediate Common Units at an exercise price of \$15.00 per share, in each case issued to Topco in connection with the Transactions.

“**Transaction Agreement**” has the meaning given in the Recitals hereto.

“**Transactions**” has the meaning given in the Transaction Agreement.

“**Transfer**” means the (a) sale of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, or (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise.

“**Underwriter**” means any investment banker(s) and manager(s) appointed to administer the offering of any Registrable Securities as principal in an Underwritten Offering.

“**Underwritten Offering**” means a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

“**Underwritten Shelf Takedown**” has the meaning given in [subsection 2.1.3](#).

“**Warrants**” has the meaning given in the Recitals hereto.

“**Well-Known Seasoned Issuer**” has the meaning set forth in Rule 405 promulgated by the Commission pursuant to the Securities Act.

“**Withdrawal Notice**” has the meaning given in [subsection 2.1.5](#).

## **ARTICLE II**

### **REGISTRATIONS**

#### **2.1 Shelf Registration.**

2.1.1 Filing. The Company shall file, within 30 days of the Closing Date, a Registration Statement for a Shelf Registration on Form S-1 (the “**Form S-1 Shelf**”) or, if the Company is eligible to use a Registration Statement on Form S-3, a Shelf Registration Statement on Form S-3 (the “**Form S-3 Shelf**,” and together with the Form S-1 Shelf, as applicable (and any Subsequent Shelf Registration), the “**Shelf**”), in each case, covering the resale of all the Registrable Securities (determined as of two (2) business days prior to such filing) on a delayed or continuous basis. The Company shall use its reasonable best efforts to cause the Shelf to become effective as soon as practicable after such filing. The Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder. The Company shall maintain the Shelf in accordance with the terms hereof, and shall prepare and file with the SEC such amendments, including post-effective amendments, and supplements as may be necessary to keep such Shelf continuously effective, available for use and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. In the event the Company files a Form S-1 Shelf, the Company shall use its reasonable best efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration) to a Form S-3 Shelf as soon as practicable after the Company is eligible to use Form S-3.

2.1.2 Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4 use its reasonable best efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the

effectiveness of such Shelf), and shall use its reasonable best efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a “**Subsequent Shelf Registration**”) registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration shall be an Automatic Shelf Registration Statement if the Company is a Well-Known Seasoned Issuer) and (b) keep such Subsequent Shelf Registration continuously effective, available for use and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form. In the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon request of a Holder shall promptly use its reasonable best efforts to cause the resale of such Registrable Securities to be covered by either, at the Company’s option, the Shelf (including by means of a post-effective amendment) or a Subsequent Shelf Registration and cause the same to become effective as soon as practicable after such filing and such Shelf or Subsequent Shelf Registration shall be subject to the terms hereof; provided, however, the Company shall only be required to cause such Registrable Securities to be so covered once annually after inquiry of the Holders.

2.1.3 **Requests for Underwritten Shelf Takedowns.** At any time and from time to time after the Shelf has been declared effective by the Commission, Topco or the Sponsor (in such case, a “**Demanding Holder**”) may request to sell all or any portion of its Registrable Securities in an Underwritten Offering that is registered pursuant to the Shelf (each, an “**Underwritten Shelf Takedown**”); provided that the Company shall only be obligated to effect an Underwritten Shelf Takedown if such offering shall include Registrable Securities proposed to be sold by the Demanding Holder with a total offering price (including piggyback securities and before underwriting discounts) reasonably expected to exceed, in the aggregate, \$50,000,000 (the “**Minimum Takedown Threshold**”). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown and the expected price range (net of underwriting discounts and commissions) of such Underwritten Shelf Takedown. The Holders that requested such Underwritten Shelf Takedown shall have the right to select the Underwriters for such offering (which shall consist of one (1) or more reputable nationally recognized investment banks), subject to the initial Demanding Holder’s prior approval (which shall not be unreasonably withheld, conditioned or delayed). Topco, on the one hand, and the Sponsor, on the other hand, may each demand not more than three (3) Underwritten Shelf Takedowns pursuant to this Section 2.1.3 in any twelve-(12-) month period. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then effective Registration Statement, including a Form S-3, that is then available for such offering.

2.1.4 **Reduction of Underwritten Offering.** If the managing Underwriter or Underwriters in an Underwritten Shelf Takedown, in good faith, advise the Company, the Demanding Holders and the Holders requesting piggyback rights pursuant to this Agreement with respect to such Underwritten Shelf Takedown (the “**Requesting Holders**”) (if any) in writing that the dollar amount or number of Registrable Securities that the Demanding Holders and the Requesting Holders (if any) desire to sell, taken together with all other equity securities that the Company desires to sell and all other equity securities, if any, that have been requested to be sold in such Underwritten Offering pursuant to separate written contractual piggyback registration rights held by any other shareholders, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in the Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the “**Maximum Number of Securities**”), then the Company shall include in such Underwritten Offering, as follows: At all times (a) first, the Registrable Securities of the



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Demanding Holders and the Requesting Holders (if any) (*pro rata* based on the respective number of Registrable Securities that each Demanding Holder and Requesting Holder (if any) has requested be included in such Underwritten Shelf Takedown) that can be sold without exceeding the Maximum Number of Securities; (b) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (a), the equity securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Securities; and (c) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (a) and (b) such other equity securities of other persons or entities that the Company is obligated to include in such Underwritten Offering pursuant to separate written contractual arrangements with such persons and that can be sold without exceeding the Maximum Number of Securities.

2.1.5 Withdrawal. Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used for marketing such Underwritten Shelf Takedown, a majority-in-interest of the Demanding Holders initiating an Underwritten Shelf Takedown shall have the right to withdraw from such Underwritten Shelf Takedown for any or no reason whatsoever upon written notification (a “**Withdrawal Notice**”) to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Shelf Takedown; provided that Topco or the Sponsor may elect to have the Company continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Shelf Takedown by Topco or the Sponsor, as applicable. If withdrawn, a demand for an Underwritten Shelf Takedown shall constitute a demand for an Underwritten Shelf Takedown for purposes of subsection 2.1.3, unless either (a) such withdrawal occurs during a period the Company has deferred taking action pursuant to Section 3.4 hereof or (b) the withdrawing Holder reimburses the Company for all Registration Expenses with respect to such Underwritten Shelf Takedown; provided that, if Topco or the Sponsor elects to continue an Underwritten Shelf Takedown pursuant to the proviso in the immediately preceding sentence, such Underwritten Shelf Takedown shall count as an Underwritten Shelf Takedown demanded by Topco or the Sponsor, as applicable, for purposes of subsection 2.1.3. Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Holders that had elected to participate in such Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Shelf Takedown prior to its withdrawal under this subsection 2.1.5, other than if a Demanding Holder elects to pay such Registration Expenses pursuant to the second sentence of this subsection 2.1.5.

## 2.2 Piggyback Registration.

2.2.1 Piggyback Rights. If the Company (for its own account or for the account of persons or entities other than the Holders of Registrable Securities) or any Holder proposes to conduct a registered offering of, or if the Company proposes to file a Registration Statement under the Securities Act with respect to the Registration of equity securities of the Company, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities of the Company, for its own account or for the account of shareholders of the Company (or by the Company and by the shareholders of the Company including, without limitation, an Underwritten Shelf Takedown pursuant to Section 2.1 hereof), other than a Registration Statement (or any registered offering with respect thereto) (a) filed in connection with any employee stock option or other benefit plan, (b) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (c) for an exchange offer or offering of securities solely to the Company’s existing shareholders, (d) for an offering of debt that is convertible into equity securities of the Company or (e) for a dividend reinvestment plan, then the Company shall give written notice of such proposed offering to all of the Holders of Registrable Securities as soon as practicable but not less than five (5) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the launch date of such offering, which notice shall (i) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any and if known, in such offering, and (ii) offer to all of the Holders of Registrable Securities the opportunity to include in such registered offering such number of Registrable Securities as such Holders may request in writing within two (2) days after receipt of such written

notice (such registered offering, a ***“Piggyback Registration”***). The Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and, if applicable, shall use its reasonable best efforts to cause the managing Underwriter or Underwriters of such Piggyback Registration to permit the Registrable Securities requested by the Holders pursuant to this [subsection 2.2.1](#) to be included therein on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. The inclusion of any Holder’s Registrable Securities in a Piggyback Registration shall be subject to such Holder’s agreement to abide by the terms of [Section 3.3](#) below.

**2.2.2 Reduction of Piggyback Registration.** If the managing Underwriter or Underwriters in an Underwritten Offering that is to be a Piggyback Registration, in good faith, advises the Company and the Holders of Registrable Securities participating in the Piggyback Registration in writing that the dollar amount or number of the equity securities that the Company desires to sell, taken together with (a) the Registrable Securities, if any, as to which registration has been requested pursuant to [Section 2.2](#) hereof and (b) the equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual registration rights of other shareholders of the Company, exceeds the Maximum Number of Securities, then:

(i) If the Registration or registered offering is undertaken for the Company’s account, the Company shall include in any such Registration or registered offering (A) first, the equity securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to [subsection 2.2.1](#) hereof, *pro rata* based on the respective number of Registrable Securities that each Holder has requested be included in such Registration, that can be sold without exceeding the Maximum Number of Securities; and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the equity securities, if any, as to which Registration or a registered offering has been requested pursuant to written contractual piggyback registration rights of other shareholders of the Company, that can be sold without exceeding the Maximum Number of Securities;

(ii) If the Registration or registered offering is pursuant to a request by persons or entities other than the Holders of Registrable Securities, then the Company shall include in any such Registration or registered offering (A) first, the equity securities of such requesting persons or entities that can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to [subsection 2.2.1](#), *pro rata* based on the number of Registrable Securities that each Holder has requested be included in such Underwritten Offering, that can be sold without exceeding the Maximum Number of Securities; (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the equity securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Securities; and (D) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A), (B) and (C), the equity securities for the account of other persons or entities that the Company is obligated to register pursuant to separate written contractual piggyback arrangements with such persons or entities that can be sold without exceeding the Maximum Number of Securities.

(iii) If the Registration or registered offering is pursuant to a request by Holder(s) of Registrable Securities pursuant to [Section 2.1](#) hereof, then the Company shall include in any such Registration or registered offering securities pursuant to [subsection 2.1.4](#).

**2.2.3 Piggyback Registration Withdrawal.** Any Holder of Registrable Securities (other than a Demanding Holder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by [Section 2.1.5](#)) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his,

her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. The Company (whether on its own good faith determination or as the result of a request for withdrawal by persons pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the Commission in connection with a Piggyback Registration (which, in no circumstance, shall include the Shelf) at any time prior to the effectiveness of such Registration Statement. Notwithstanding anything to the contrary in this Agreement (other than [Section 2.1.5](#)), the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this [subsection 2.2.3](#).

**2.2.4 Unlimited Piggyback Registration Rights.** For purposes of clarity, subject to [subsection 2.1.5](#), any Piggyback Registration effected pursuant to [Section 2.2](#) hereof shall not be counted as a demand for an Underwritten Shelf Takedown under [subsection 2.1.3](#) hereof.

**2.3 Restrictions on Transfer.** In connection with any Underwritten Offering of equity securities of the Company, each Holder that holds more than 10% of the issued and outstanding Class A Common Stock (on a fully-exchanged basis after giving effect to the exchange of all Intermediate Common Units for Class A Common Stock) and each Holder participating in the Underwritten Offering, agrees that it shall not Transfer any shares of Class A Common Stock (other than those included in such offering pursuant to this Agreement), without the prior written consent of the Company, during the seven (7) days prior (to the extent notice of such Underwritten Offering has been provided) to and the 90-day period beginning on the date of pricing of such offering, except in the event the Underwriter managing the offering otherwise agrees by written consent. Each Holder agrees to execute a customary lock-up agreement in favor of the Underwriters to such effect (in each case on substantially the same terms and conditions as all such Holders). Notwithstanding the foregoing, with respect to an Underwritten Offering, a Holder shall not be subject to this [Section 2.3](#) with respect to an Underwritten Offering unless each shareholder of the Company that (together with their Affiliates) hold at least 10% of the issued and outstanding Class A Common Stock (on a fully-exchanged basis after giving effect to the exchange of all Intermediate Common Units for Class A Common Stock) and each of the Company’s directors and executive officers have agreed to a lock-up on terms at least as restrictive with respect to such Underwritten Offering as requested of the Holders. A Holder’s obligations under the second sentence of this [Section 2.3](#) shall only apply for so long as such Holder (together with its Affiliates) holds at least 10% of the issued and outstanding Class A Common Stock (on a fully-exchanged basis after giving effect to the exchange of all Intermediate Common Units for Class A Common Stock).

### **ARTICLE III**

#### **COMPANY PROCEDURES**

**3.1 General Procedures.** In connection with effecting any Shelf Registration, Shelf Takedown and/or other disposition of Registrable Securities pursuant to a registration statement contemplated herein (to the extent applicable), the Company shall use its reasonable best efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof, and pursuant thereto the Company shall, as expeditiously as possible:

3.1.1 prepare and file with the Commission as soon as practicable a Registration Statement with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become effective and remain effective until all Registrable Securities have ceased to be Registrable Securities;

3.1.2 prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Holder that holds at least five (5) percent of the Registrable Securities registered on such Registration Statement or any

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Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus;

3.1.3 prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto, furnish without charge to the Underwriters, if any, and the Holders of Registrable Securities included in such Registration, and such Holders' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and the Holders of Registrable Securities included in such Registration or the legal counsel for any such Holders may request in order to facilitate the disposition of the Registrable Securities owned by such Holders;

3.1.4 prior to any public offering of Registrable Securities, use its reasonable best efforts to (a) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as the Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence satisfactory to such Holders that the Registrable Securities are exempt from such registration or qualification) and (b) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

3.1.5 cause all such Registrable Securities to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

3.1.6 provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

3.1.7 advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

3.1.8 at least five (5) days prior to the filing of any Registration Statement or Prospectus or any amendment or supplement to such Registration Statement or Prospectus (or such shorter period of time as may be necessary in order to comply with the Securities Act, the Exchange Act, and the rules and regulations promulgated under the Securities Act or Exchange Act, as applicable), furnish a copy thereof to each seller of such Registrable Securities or its counsel (excluding any exhibits thereto and any filing made under the Exchange Act that is to be incorporated by reference therein);

3.1.9 notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 3.4 hereof;

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3.1.10 permit representatives of the Holders, the Underwriters or other financial institutions facilitating each transaction, if any, and any attorney, consultant or accountant retained by such Holders or Underwriter to participate, at each such person's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; provided, however, that such representatives, Underwriters or financial institutions agree to confidentiality arrangements reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

3.1.11 obtain a "cold comfort" letter from the Company's independent registered public accountants in the event of an Underwritten Offering or other disposition pursuant to a registration statement contemplated herein that is facilitated by a financial institution which the participating Holders may rely on, in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Holders;

3.1.12 on the date the Registrable Securities are delivered for sale pursuant to such Registration, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the Holders, the placement agent or sales agent, if any, and the Underwriters or financial institution, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the Holders, placement agent, sales agent, Underwriter or financial institution may reasonably request and as are customarily included in such opinions and negative assurance letters, and reasonably satisfactory to a majority in interest of the participating Holders;

3.1.13 in the event of any Underwritten Offering or other disposition pursuant to a registration statement contemplated herein that is facilitated by a financial institution or similar agent, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing Underwriter of such offering or such applicable financial institution;

3.1.14 make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least 12 months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule promulgated thereafter by the Commission);

3.1.15 with respect to an Underwritten Offering pursuant to Section 2.1.3, use its reasonable best efforts to make available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

3.1.16 otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holders, in connection with such Registration.

**3.2 Registration Expenses.** The Registration Expenses of all Registrations shall be borne by the Company. It is acknowledged by the Holders that the Holders shall bear all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees, Underwriter marketing costs and, other than as set forth in the definition of "Registration Expenses," all reasonable fees and expenses of any legal counsel representing the Holders.

**3.3 Requirements for Participation in Underwritten Offerings.** Notwithstanding anything in this Agreement to the contrary, if any Holder does not provide the Company with its requested Holder Information, the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines, based on the advice of counsel, that such information is necessary to effect the registration and such Holder continues thereafter to withhold such information. No Holder may participate in any Underwritten Offering for equity securities of the Company pursuant to a Registration initiated by the Company

hereunder unless such Holder (a) agrees to sell such Holder's securities on the basis provided in any underwriting and other arrangements approved by the Company and (b) completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting agreements and other customary documents as may be reasonably required under the terms of such underwriting arrangements. Subject to the minimum thresholds set forth in [Section 2.1.3](#) and [3.1.15](#) of this Agreement, the exclusion of a Holder's Registrable Securities as a result of this [Section 3.3](#) shall not affect the registration of the other Registrable Securities to be included in such Registration.

#### 3.4 Suspension of Sales; Adverse Disclosure; Restrictions on Registration Rights.

3.4.1 Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, each Holder shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement (it being understood that the Company hereby covenants to prepare and file such supplement or amendment as soon as practicable after the time of such notice), or until it is advised in writing by the Company that the use of the Prospectus may be resumed.

3.4.2 If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would (a) require the Company to make an Adverse Disclosure, (b) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control or (c) in the good faith judgment of the majority of the Board, be seriously detrimental to the Company, and the majority of the Board concludes as a result that it is essential to defer such filing, initial effectiveness or continued use at such time, the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event more than 45 days, determined in good faith by the Company to be necessary for such purpose; provided that such right to delay or suspend shall be exercised by the Company not more than two (2) times, which may be consecutive, in any 12-month period. In the event the Company exercises its rights under the preceding sentence, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities. The Company shall immediately notify the Holders of the expiration of any period during which it exercised its rights under this Section 3.4.

3.4.3 (a) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date one hundred and twenty (120) days after the effective date of, a Company-initiated Registration and provided that the Company continues to actively employ, in good faith, all reasonable efforts to maintain the effectiveness of the applicable Shelf Registration Statement, or (b) if, pursuant to [Section 2.1.3](#), a Demanding Holder has requested an Underwritten Shelf Takedown and the Company and such Demanding Holder are unable to obtain the commitment of underwriters to firmly underwrite such offering, the Company may, upon giving prompt written notice of such action to the Holders, delay any other registered offering pursuant to [Section 2.1.3](#).

3.5 Reporting Obligations. As long as any Holder shall own Registrable Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided that any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval System shall be deemed to have been furnished or delivered to the Holders pursuant to this [Section 3.5](#).

3.6 Other Obligations. In connection with a sale or transfer of Registrable Securities exempt from Section 5 of the Securities Act or through any broker-dealer transactions described in the plan of distribution set forth within the Prospectus and pursuant to the Registration Statement of which such Prospectus forms a part, the

Company shall, subject to the receipt of any customary documentation reasonably required from the applicable Holders and/or their broker(s) in connection therewith, (a) promptly instruct its transfer agent to remove any restrictive legends applicable to the Registrable Securities being sold or transferred and (b) cause its legal counsel to deliver the necessary legal opinions, if any, to the transfer agent in connection with the instruction under subclause (a). In addition, the Company shall cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holders, in connection with the aforementioned sales or transfers; provided, however, that the Company shall have no obligation to participate in any “road shows” or assist with the preparation of any offering memoranda or related documentation with respect to any sale or transfer of Registrable Securities in any transaction that does not constitute an Underwritten Offering.

## **ARTICLE IV**

### **INDEMNIFICATION AND CONTRIBUTION**

#### **4.1 Indemnification.**

4.1.1 The Company agrees to indemnify, to the extent permitted by law, each Holder, its officers and directors and each person who controls such Holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses (including reasonable attorneys’ fees) caused by any (a) untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, or (b) any violation or alleged violation by the Company of the Securities Act or any other applicable federal or state securities laws or any rule or regulation promulgated thereunder application and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, except, in each case, insofar as the same are caused by or contained in any information or affidavit furnished in writing to the Company by or on behalf of such Holder expressly for use therein. The Company shall indemnify the Underwriters, their officers and directors and each person who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to the indemnification of the Holder.

4.1.2 In connection with any Registration Statement in which a Holder is participating, such Holder shall furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus (the “**Holder Information**”) and, to the extent permitted by law, shall indemnify the Company, its directors and officers and agents and each person who controls the Company (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses (including without limitation reasonable attorneys’ fees) resulting from any untrue or alleged untrue statement of material fact contained in the Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such Holder expressly for use therein; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders, and the liability of each such Holder shall be in proportion to and limited to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders shall indemnify the Underwriters, their officers, directors and each person who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to indemnification of the Company.

4.1.3 Any person entitled to indemnification herein shall (a) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person’s right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (b) unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim,



permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one (1) counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

4.1.4 The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person of such indemnified party and shall survive the transfer of securities. The Company and each Holder participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company's or such Holder's indemnification is unavailable for any reason.

4.1.5 If the indemnification provided under this Section 4.1 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of any Holder under this subsection 4.1.5 shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in subsections 4.1.1, 4.1.2 and 4.1.3 above, any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this subsection 4.1.5 were determined by *pro rata* allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this subsection 4.1.5. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this subsection 4.1.5 from any person who was not guilty of such fraudulent misrepresentation.



**ARTICLE V**  
**MISCELLANEOUS**

5.1 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or electronic mail or postage prepaid mail (registered or certified) or nationally recognized overnight courier service and shall be deemed given when so delivered by hand or electronic mail, or if mailed, three (3) days after mailing (one (1) business day in the case of overnight courier service), as follows:

If, to the Company, to:

Vivid Seats LLC  
111 N. Canal Street, Suite 800  
Chicago, IL 60606  
Email: stan@vividseats.com  
lawrence.fey@vividseats.com  
Attention: Stanley Chia  
Lawrence Fey

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
330 N. Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Email: bradley.faris@lw.com  
justin.hamill@lw.com  
owen.alexander@lw.com  
Attention: Bradley C. Faris  
Justin G. Hamill  
Owen Alexander

If, to Sponsor or any of its Affiliates:

c/o Eldridge Industries  
600 Steamboat Road, Suite 200  
Greenwich, CT 06830  
Email: robert.ott@eldridge.com  
Attn: Robert Ott

with a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP  
2049 Century Park East, 37<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attention: Damon Fisher, P.C.  
Bianca Levin-Soler  
Email: dfisher@kirkland.com  
bianca.levin-soler@kirkland.com

*and*

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Christian Nagler  
Aslam Rawoof  
Email: cnagler@kirkland.com  
aslam.rawoof@kirkland.com

If to any other Holder, at such Holder's address or facsimile number as set forth in the Company's books and records.

Any party may change its address for notice at any time and from time to time by written notice to the other parties hereto, and such change of address shall become effective ten (10) days after delivery of such notice as provided in this [Section 5.1](#).

## 5.2 [Assignment; No Third Party Beneficiaries](#).

5.2.1 This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part.

5.2.2 Prior to the expiration of the Lock-Up Period, no Holder may assign or delegate such Holder's rights, duties or obligations under this Agreement, in whole or in part, except to (a) an Affiliate of such Holder, (b) direct and/or indirect equity holders of any Holder pursuant to a distribution as described in [Section 5.14](#) of this Agreement or (c) any person with the prior written consent of the Company. A sale or transfer that qualifies pursuant to an exemption from the Securities Act shall not be deemed to have been made pursuant to a Registration Statement.

5.2.3 After the expiration of the Lock-Up Period, a Holder may assign or delegate such Holder's rights, duties or obligations under this Agreement, in whole or in part, to (a) up to five (5) Permitted Transferees, provided, however, that each such Permitted Transferee holds, after giving effect to such assignment or delegation, at least two percent (2%) of the then-outstanding Class A Common Stock, (b) an Affiliate of such Holder, (c) direct and/or indirect equity holders of any Holder pursuant to a distribution as described in [Section 5.14](#) of this Agreement or (d) any person with the prior written consent of the Company.

5.2.4 This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders.

5.2.5 Other than as expressly set forth herein, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing in this Agreement expressed or implied shall give or be construed to give to any person or entity, other than the parties hereto and such successors and permitted assigns, any legal or equitable rights under this Agreement.

5.2.6 No assignment by any party hereto of such party's rights, duties and obligations hereunder shall be binding upon or obligate the Company unless and until the Company shall have received (a) written notice of such assignment as provided in [Section 5.1](#) hereof and (b) the written agreement of the assignee, in a form reasonably satisfactory to the Company, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement). Any transfer or assignment made other than as provided in this [Section 5.2](#) shall be null and void.

5.3 [Execution of Agreement](#). This Agreement may be executed in one (1) or more counterparts, all of which shall be considered one (1) and the same agreement, and shall become effective when one (1) or more such counterparts have been signed by each of the parties and delivered to the other party. Facsimile or electronic mail transmission of counterpart signatures to this Agreement shall be acceptable and binding.

## 5.4 [Governing Law; Venue](#).

5.4.1 This Agreement and all disputes, claims or controversies relating to, arising out of, or in connection with this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts executed in and to be performed in the State of Delaware, without giving effect to any choice of law or conflict of laws, rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

5.4.2 Any proceeding or Action based upon, arising out of or related to this Agreement must be brought in the Court of Chancery of the State of Delaware (or, to the extent such Court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding or Action, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and agrees not to bring any proceeding or Action arising out of or relating to this Agreement in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Legal Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action, suit or proceeding brought pursuant to this Section 5.4.2.

5.5 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably, unconditionally and voluntarily waives any right such party may have to a trial by jury in respect of any Action, suit or proceeding directly or indirectly arising out of or relating to this Agreement.

5.6 Amendments and Waivers. Only upon the written consent of the Company and the Holders of at least a majority in interest of the total Registrable Securities at the time in question as determined in good faith by the Company, compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; provided, however, that notwithstanding the foregoing, any amendment hereto or waiver hereof that adversely affects one Holder, solely in its capacity as a holder of the shares of capital stock of the Company, in a manner that is materially different from the other Holders (in such capacity) shall require the consent of the Holder so affected. No provision of this Agreement may be waived unless such waiver is in writing and signed by the party or parties against whom such waiver is to be effective. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

5.7 Other Registration Rights. Other than the PIPE Investors who have registration rights pursuant to their respective Subscription Agreements with respect to equity securities of the Company to be issued on the Closing Date, the Company represents and warrants that no person, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration Statement filed by the Company for the sale of securities for its own account or for the account of any other person. The Company shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to any Holder of Registrable Securities in this Agreement. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail.

5.8 Rule 144. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act, the Company covenants that it will (a) make available information necessary to comply with Rule 144, if available with respect to resales of the Registrable Securities under the Securities Act, at all times, and (b) take such further action as the Holders may reasonably request, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act (if available with respect to resales of the Registrable Securities), as such rule may be amended from time to time. Upon the reasonable request of any Holder, the Company will deliver to it a written statement as to whether they have complied with such information requirements, and, if not, the specific reasons for non-compliance.

5.9 Term. This Agreement shall terminate with respect to any Holder on the date that such Holder no longer holds any Registrable Securities. The provisions of Section 3.5 and Article IV shall survive any termination.

5.10 Holder Information. Each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder, including, without limitation, for purposes of Section 5.8 hereof.

5.11 Severability. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5.12 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Company shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by a Holder and to enforce specifically the terms and provisions hereof.

5.13 Entire Agreement; Restatement. This Agreement constitutes the full and entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. Upon the Closing, the Original Agreement shall no longer be of any force or effect. Upon any amendment or restatement, this Agreement shall no longer be of any force or effect.

5.14 Distributions. In the event that any Holder distributes, or has distributed, any of its Registrable Securities to its direct and/or indirect equity holders, such distributees shall be treated as the applicable Holder hereunder; provided that only the holders of a majority-in-interest of the Registrable Securities held by all such distributees, as determined in good faith by the Company, shall be entitled to take any action under this Agreement that such Holder is entitled to take, provided, further, that such distributees, taken as a whole, shall not be entitled to rights in excess of those conferred to the applicable Holder, as if it remained a single entity party to this Agreement.

5.15 Adjustments. If, and as often as, there are any changes in the Registrable Securities by way of stock split, stock dividend, combination or reclassification, or through merger, consolidation, reorganization, recapitalization or sale, or by any other means, appropriate adjustment shall be made in the provisions of this Agreement, as may be required, so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Registrable Securities as so changed.

5.16 Further Assurances. From time to time, at another party's request and without further consideration (but at the requesting party's reasonable cost and expense), each party shall execute and deliver such additional documents and take all such further action as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**COMPANY:**

**Vivid Seats Inc.**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Amended and Restated Registration Rights Agreement]

**TOPCO:**

**Hoya Topco, LLC**

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Amended and Restated Registration Rights Agreement]

Annex L-21

**SPONSOR:**

**Horizon Sponsor, LLC**

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Amended and Restated Registration Rights Agreement]

Annex L-22

**HOLDER:**

**[•]**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Amended and Restated Registration Rights Agreement]  
Annex L-23



AMENDED AND RESTATED WARRANT AGREEMENT

HORIZON ACQUISITION CORPORATION

and

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

Dated ~~August 25~~ [ • ], 20202021

THIS AMENDED AND RESTATED WARRANT AGREEMENT (this “*Agreement*”), dated ~~August 20~~ [ • ], 20202021, is by and between Horizon Acquisition Corporation, a Cayman Islands exempted company (the “*Company*”), and Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (in such capacity, the “*Warrant Agent*”).

WHEREAS, ~~it is proposed that~~ the Company ~~enter~~ and the Warrant Agent entered into that certain Warrant Agreement, dated as of August 20, 2020 (the “Original Agreement”) in connection with the Company’s entry into that certain Sponsor Warrants Purchase Agreement, with Horizon Sponsor, LLC, a Delaware limited liability company (the “*Sponsor*”), pursuant to which the Sponsor ~~will purchase~~ purchased an aggregate of ~~5,933,333 warrants (or up to 6,623,333 warrants if the underwriters in the Public Offering (defined below) exercise their Over-allotment Option (as defined below) in full)~~ 6,519,791 warrants simultaneously with the closing of the Offering ~~(and the closing of the Over-allotment Option, if applicable)~~, bearing the legend set forth in Exhibit B hereto (the “*Private Placement Warrants*”) at a purchase price of \$1.50 per Private Placement Warrant. Each Private Placement Warrant entitles the holder thereof to purchase one Ordinary Share (as defined below) at a price of \$11.50 per share, subject to adjustment as described herein; and

WHEREAS, in order to finance the Company’s transaction costs in connection with an intended initial merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination, involving the Company and one or more businesses (a “*Business Combination*”), the Sponsor or an affiliate of the Sponsor or certain of the Company’s officers and directors may, but are not obligated to, loan the Company funds as the Company may require, of which up to \$1,500,000 of such loans may be convertible into up to an additional 1,000,000 Private Placement Warrants at a price of \$1.50 per Private Placement Warrant; and

WHEREAS, the Company ~~is engaged in~~ completed an initial public offering (the “*Offering*”) of units of the Company’s equity securities, each such unit comprised of one Ordinary Share and ~~one-fourth~~ one-third of one Public Warrant (as defined below) (the “*Units*”) and, in connection therewith, ~~has determined to issue and deliver up to 14,375,000~~ issued and delivered 18,132,811 redeemable warrants ~~(including up to 1,875,000 redeemable warrants subject to the Over-allotment Option)~~ to public investors in the Offering (the “*Public Warrants*”) and, together with the Private Placement Warrants, the “*Warrants*”). Each whole Warrant entitles the holder thereof to purchase one Class A ordinary share of the Company, par value \$0.0001 per share (“*Ordinary Shares*”), for \$11.50 per share, subject to adjustment as described herein. Only whole Warrants are exercisable. A holder of the Public Warrants will not be able to exercise any fraction of a Warrant; and

WHEREAS, the Company ~~has~~ filed with the Securities and Exchange Commission (the “*Commission*”) registration statement on Form S-1, File No. 333-240313, and a prospectus (the “*Prospectus*”), for the registration, under the Securities Act of 1933, as amended (the “*Securities Act*”), of the Units, the Public Warrants and the Ordinary Shares included in the Units; and

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~~WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, registration, transfer, exchange, redemption and exercise of the Warrants; and~~

WHEREAS, Section 9.8 of the Original Agreement permits amendment of the terms thereof with the vote or written consent of the Registered Holders of 65% of the then-outstanding Public Warrants and, solely with respect to any amendment to the terms of the Private Placement Warrants or any provision of the Original Agreement with respect to the Private Placement Warrants, 65% of the then-outstanding Private Placement Warrants (the “Holder Consent”); and

WHEREAS, the Company desires to, upon receipt of the Holder Consent, amend and restate the Original Agreement as set forth herein and to provide for the form and provisions of the Warrants, the terms upon which they shall be issued and exercised, and the respective rights, limitation of rights, and immunities of the Company, the Warrant Agent and the holders of the Warrants; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants, when executed on behalf of the Company and countersigned by or on behalf of the Warrant Agent (if a physical certificate is issued), as provided herein, the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company for the Warrants, and the Warrant Agent hereby accepts such appointment and agrees to perform the same in accordance with the terms and conditions set forth in this Agreement.

2. Warrants.

2.1. Form of Warrant. Each Warrant shall initially be issued in registered form only.

2.2. Effect of Countersignature. If a physical certificate is issued, unless and until countersigned by the Warrant Agent pursuant to this Agreement, a certificated Warrant shall be invalid and of no effect and may not be exercised by the holder thereof.

2.3. Registration.

2.3.1. Warrant Register. The Warrant Agent shall maintain books (the “**Warrant Register**”), for the registration of original issuance and the registration of transfer of the Warrants. Upon the initial issuance of the Warrants in book-entry form, the Warrant Agent shall issue and register the Warrants in the names of the respective holders thereof in such denominations and otherwise in accordance with instructions delivered to the Warrant Agent by the Company. Ownership of beneficial interests in the Public Warrants shall be shown on, and the transfer of such ownership shall be effected through, records maintained by institutions that have accounts with The Depository Trust Company (the “**Depository**”) (such institution, with respect to a Warrant in its account, a “**Participant**”).

If the Depository subsequently ceases to make its book-entry settlement system available for the Public Warrants, the Company may instruct the Warrant Agent regarding making other arrangements for book-entry settlement. In the event that the Public Warrants are not eligible for, or it is no longer necessary to have the Public Warrants available in, book-entry form, the Warrant Agent shall provide written instructions to the Depository to deliver to the Warrant Agent for cancellation each book-entry Public Warrant, and the Company shall instruct the Warrant Agent to deliver to the Depository definitive certificates in physical form evidencing such Warrants (“**Definitive Warrant Certificates**”) which shall be in the form annexed hereto as Exhibit A.

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Physical certificates, if issued, shall be signed by, or bear the facsimile signature of, the Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, General Counsel, Secretary or other principal officer of the Company. In the event the person whose facsimile signature has been placed upon any Warrant shall have ceased to serve in the capacity in which such person signed the Warrant before such Warrant is issued, it may be issued with the same effect as if he or she had not ceased to be such at the date of issuance.

2.3.2. Registered Holder. Prior to due presentment for registration of transfer of any Warrant, the Company and the Warrant Agent may deem and treat the person in whose name such Warrant is registered in the Warrant Register (the “**Registered Holder**”) as the absolute owner of such Warrant and of each Warrant represented thereby, for the purpose of any exercise thereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

2.4. Detachability of Warrants. The Ordinary Shares and Public Warrants comprising the Units ~~shall begin~~became eligible for separate trading on ~~the 52nd day following the date of the Prospectus or, if such 52nd day is not on a day, other than a Saturday, Sunday or federal holiday, on which banks in New York City are generally open for normal business (a “Business Day”), then on the immediately succeeding Business Day following such date, or earlier (the “Detachment Date”) with the consent of Credit Suisse Securities (USA) LLC, but in no event shall the Ordinary Shares and the Public Warrants comprising the Units be separately traded until (A) the Company has filed a Current Report on Form 8-K with the Commission containing an audited balance sheet reflecting the receipt by the Company of the gross proceeds of the Offering, including the proceeds then received by the Company from the exercise by the underwriters of their right to purchase additional Units in the Offering (the “Over-allotment Option”), if the Over-allotment Option is exercised prior to the filing of the Current Report on Form 8-K, and (B) the Company issues a press release announcing when such separate trading shall begin.~~October 12, 2020.

2.5. Fractional Warrants. The Company shall not issue fractional Warrants other than as part of the Units, each of which is comprised of one Ordinary Share and ~~one-fourth~~one-third of one whole Public Warrant. If, upon the detachment of Public Warrants from the Units or otherwise, a holder of Warrants would be entitled to receive a fractional Warrant, the Company shall round down to the nearest whole number the number of Warrants to be issued to such holder.

2.6. Private Placement Warrants. The Private Placement Warrants shall be identical to the Public Warrants, except that ~~so long as they are held by the Sponsor or any of its Permitted Transferees (as defined below)~~ the Private Placement Warrants: (i) ~~may be exercised for cash or on a “cashless basis,” pursuant to subsection 3.3.1(c) hereof;~~ (ii) including the Ordinary Shares issuable upon exercise of the Private Placement Warrants, may not be transferred, assigned or sold until thirty (30) days after the completion by the Company of an initial Business Combination, and ~~(iii)~~ (iii) shall not be redeemable by the Company ~~pursuant to Section 6.1 hereof and (iv) shall only be redeemable by the Company pursuant to Section 6.2 if the Reference Value (as defined below) is less than \$18.00 per share (subject to adjustment in compliance with Section 4 hereof);~~ provided, however, that in the case of ~~(iii)~~ (iii), the Private Placement Warrants and any Ordinary Shares issued upon exercise of the Private Placement Warrants may be transferred by the holders thereof:

(a) to the Company’s officers or directors, any affiliate or family member of any of the Company’s officers or directors, any affiliate of the Sponsor or to any member of the Sponsor or any of their affiliates;

(b) in the case of an individual, as a gift to such person’s immediate family or to a trust, the beneficiary of which is a member of such person’s immediate family, an affiliate of such person or to a charitable organization;

(c) in the case of an individual, by virtue of laws of descent and distribution upon death of such person;

(d) in the case of an individual, pursuant to a qualified domestic relations order;

(e) by private sales or transfers made in connection with any forward purchase agreement or similar arrangement or in connection with the consummation of the Business Combination at prices no greater than the price at which the Private Placement Warrants or Ordinary Shares, as applicable, were originally purchased;

(f) by virtue of the laws of the Cayman Islands or the Sponsor's organizational documents upon liquidation or dissolution of the Sponsor;

(g) in the event of the Company's liquidation prior to the completion of its initial Business Combination; or

(h) in the event of, subsequent to the completion of the Company's initial Business Combination, the Company's completion of a liquidation, merger, share exchange or other similar transaction which results in all of the public shareholders having the right to exchange their Ordinary Shares for cash, securities or other property; provided, however, that, in the case of clauses (a) through (f), these permitted transferees (the "**Permitted Transferees**") must enter into a written agreement with the Company agreeing to be bound by the transfer restrictions in this Agreement.

### 3. Terms and Exercise of Warrants.

3.1. **Warrant Price.** Each whole Warrant shall entitle the Registered Holder thereof, subject to the provisions of such Warrant and of this Agreement, to purchase from the Company the number of Ordinary Shares stated therein, at the price of \$11.50 per share, subject to the adjustments provided in Section 4 hereof and in the last sentence of this Section 3.1. The term "**Warrant Price**" as used in this Agreement shall mean the price per share (including in cash or by payment of Warrants pursuant to a "cashless exercise," to the extent permitted hereunder) described in the prior sentence at which Ordinary Shares may be purchased at the time a Warrant is exercised. The Company in its sole discretion may lower the Warrant Price at any time prior to the Expiration Date (as defined below) for a period of not less than fifteen Business Days (unless otherwise required by the Commission, any national securities exchange on which the Warrants are listed or applicable law); provided that the Company shall provide at least five days' prior written notice of such reduction to Registered Holders of the Warrants; and provided further, that any such reduction shall be identical among all of the Warrants. The term "**Business Day**" means a day other than a Saturday, Sunday or federal holiday on which banks in New York City are generally open for normal business.

3.2. **Duration of Warrants.** A Warrant may be exercised only during the period (the "**Exercise Period**") (A) commencing on the later of: (i) the date that is thirty (30) days after the first date on which the Company completes a Business Combination, and (ii) the date that is twelve (12) months from the date of the closing of the Offering, and (B) terminating at the earliest to occur of (x) 5:00 p.m., New York City time on the date that is five (5) years after the date on which the Company completes its initial Business Combination, (y) the liquidation of the Company in accordance with the Company's amended and restated memorandum and articles of association, as amended from time to time, if the Company fails to complete a Business Combination, and (z) other than with respect to the Private Placement Warrants ~~then held by the Sponsor or its Permitted Transferees with respect to a redemption pursuant to Section 6.1 hereof or, if the Reference Value equals or exceeds \$18.00 per share (subject to adjustment in compliance with Section 4 hereof), Section 6.2 hereof~~, 5:00 p.m., New York City time on the Redemption Date (as defined below) as provided in Section 6.3 hereof (the "**Expiration Date**"); provided, however, that the exercise of any Warrant shall be subject to the satisfaction of any applicable conditions, as set forth in subsection 3.3.2 below, with respect to an effective registration statement or a valid exemption therefrom being available. Except with respect to the right to receive the Redemption Price (as defined below) (other than with respect to a Private Placement Warrant ~~then held by the Sponsor or its Permitted Transferees in connection with a redemption pursuant to Section 6.1~~

~~hereof or, if the Reference Value equals or exceeds \$18.00 per share (subject to adjustment in compliance with Section 4 hereof), Section 6.2 hereof))~~ in the event of a redemption (as set forth in [Section 6](#) hereof), each Warrant (other than a Private Placement Warrant ~~then held by the Sponsor or its Permitted Transferees in the event of a redemption pursuant to Section 6.1 hereof or, if the Reference Value equals or exceeds \$18.00 per share (subject to adjustment in compliance with Section 4 hereof), Section 6.2 hereof~~) not exercised on or before the Expiration Date shall become void, and all rights thereunder and all rights in respect thereof under this Agreement shall cease at 5:00 p.m. New York City time on the Expiration Date. The Company in its sole discretion may extend the duration of the Warrants by delaying the Expiration Date; provided that the Company shall provide at least twenty (20) days prior written notice of any such extension to Registered Holders of the Warrants and, provided further that any such extension shall be identical in duration among all the Warrants.

3.3. Exercise of Warrants.

3.3.1. Payment. Subject to the provisions of the Warrant and this Agreement, a Warrant may be exercised by the Registered Holder thereof by delivering to the Warrant Agent at its corporate trust department (i) the Definitive Warrant Certificate evidencing the Warrants to be exercised, or, in the case of a Warrant represented by a book-entry, the Warrants to be exercised (the “**Book-Entry Warrants**”) on the records of the Depositary to an account of the Warrant Agent at the Depositary designated for such purposes in writing by the Warrant Agent to the Depositary from time to time, (ii) an election to purchase (“**Election to Purchase**”) any Ordinary Shares pursuant to the exercise of a Warrant, properly completed and executed by the Registered Holder on the reverse of the Definitive Warrant Certificate or, in the case of a Book-Entry Warrant, properly delivered by the Participant in accordance with the Depositary’s procedures, and (iii) the payment in full of the Warrant Price for each Ordinary Share as to which the Warrant is exercised and any and all applicable taxes due in connection with the exercise of the Warrant, the exchange of the Warrant for the Ordinary Shares and the issuance of such Ordinary Shares, as follows:

(a) in lawful money of the United States, in good certified check or good bank draft payable to the order of the Warrant Agent; or

~~(b) [Reserved];~~

~~(c) with respect to any Private Placement Warrant, so long as such Private Placement Warrant is held by the Sponsor or a Permitted Transferee, by surrendering the Warrants for that number of Ordinary Shares equal to (i) if in connection with a redemption of Private Placement Warrants pursuant to Section 6.2 hereof, as provided in Section 6.2 hereof with respect to a Make-Whole Exercise and (ii) in all other scenarios the quotient obtained by dividing (x) the product of the number of Ordinary Shares underlying the Warrants, multiplied by the excess of the “Sponsor Exercise Fair Market Value” (as defined in this subsection 3.3.1(c)) less the Warrant Price by (y) the Sponsor Exercise Fair Market Value. Solely for purposes of this subsection 3.3.1(c), the “Sponsor Fair Market Value” shall mean the average last reported sale price of the Ordinary Shares for the ten (10) trading days ending on the third (3<sup>rd</sup>) trading day prior to the date on which notice of exercise of the Private Placement Warrant is sent to the Warrant Agent;~~

~~(d) —as provided in Section 6.2 hereof with respect to a Make-Whole Exercise; or~~

~~(e)~~ as provided in Section 7.4 hereof.

3.3.2. Issuance of Ordinary Shares on Exercise. As soon as practicable after the exercise of any Warrant and the clearance of the funds in payment of the Warrant Price (if payment is pursuant to [subsection 3.3.1\(a\)](#)), the Company shall issue to the Registered Holder of such Warrant a book-entry position or certificate, as applicable, for the number of Ordinary Shares to which he, she or it is entitled, registered in such name or names as may be directed by him, her or it on the register of members of the Company, and if such

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Warrant shall not have been exercised in full, a new book-entry position or countersigned Warrant, as applicable, for the number of shares as to which such Warrant shall not have been exercised. Notwithstanding the foregoing, the Company shall not be obligated to deliver any Ordinary Shares pursuant to the exercise of a Warrant and shall have no obligation to settle such Warrant exercise unless (i) a registration statement under the Securities Act with respect to the Ordinary Shares underlying the Public Warrants is then effective and a prospectus relating thereto is current, subject to the Company's satisfying its obligations under Section 7.4 or (ii) a valid exemption from registration is available. No Warrant shall be exercisable and the Company shall not be obligated to issue Ordinary Shares upon exercise of a Warrant unless the Ordinary Shares issuable upon such Warrant exercise have been registered, qualified or deemed to be exempt from registration or qualification under the securities laws of the state of residence of the Registered Holder of the Warrants. Subject to Section 4.6 of this Agreement, a Registered Holder of Warrants may exercise its Warrants only for a whole number of Ordinary Shares. The Company may require holders of ~~Public~~ Warrants to settle the Warrant on a "cashless basis" pursuant to Section 7.4. If, by reason of any exercise of Warrants on a "cashless basis", the holder of any Warrant would be entitled, upon the exercise of such Warrant, to receive a fractional interest in an Ordinary Share, the Company shall round down to the nearest whole number, the number of Ordinary Shares to be issued to such holder. For the avoidance of doubt, in no event will the Company be required to pay cash to the holder of any Warrant.

3.3.3. Valid Issuance. All Ordinary Shares issued upon the proper exercise of a Warrant in conformity with this Agreement shall be validly issued, fully paid and nonassessable.

3.3.4. Date of Issuance. Each person in whose name any book-entry position or certificate, as applicable, for Ordinary Shares is issued and who is registered in the register of members of the Company shall for all purposes be deemed to have become the holder of record of such Ordinary Shares on the date on which the Warrant, or book-entry position representing such Warrant, was surrendered and payment of the Warrant Price was made, irrespective of the date of delivery of such certificate in the case of a certificated Warrant, except that, if the date of such surrender and payment is a date when the register of members of the Company or book-entry system of the Warrant Agent are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the share transfer books or book-entry system are open.

3.3.5. Maximum Percentage. A holder of a Warrant may notify the Company in writing in the event it elects to be subject to the provisions contained in this subsection 3.3.5; however, no holder of a Warrant shall be subject to this subsection 3.3.5 unless he, she or it makes such election. If the election is made by a holder, the Warrant Agent shall not effect the exercise of the holder's Warrant, and such holder shall not have the right to exercise such Warrant, to the extent that after giving effect to such exercise, such person (together with such person's affiliates), to the Warrant Agent's actual knowledge, would beneficially own in excess of 4.9% or 9.8% (or such other amount specified by such holder) (the "**Maximum Percentage**") of the Ordinary Shares outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of Ordinary Shares beneficially owned by such person and its affiliates shall include the number of Ordinary Shares issuable upon exercise of the Warrant with respect to which the determination of such sentence is being made, but shall exclude Ordinary Shares that would be issuable upon (x) exercise of the remaining, unexercised portion of the Warrant beneficially owned by such person and its affiliates and (y) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such person and its affiliates (including, without limitation, any convertible notes or convertible preferred shares or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). For purposes of the Warrant, in determining the number of outstanding Ordinary Shares, the holder may rely on the number of outstanding Ordinary Shares as reflected in (1) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission as the case may be, (2) a more recent public

announcement by the Company or (3) any other notice by the Company or Continental Stock Transfer & Trust Company, as transfer agent (in such capacity, the “**Transfer Agent**”), setting forth the number of Ordinary Shares outstanding. For any reason at any time, upon the written request of the holder of the Warrant, the Company shall, within two (2) Business Days, confirm orally and in writing to such holder the number of Ordinary Shares then outstanding. In any case, the number of issued and outstanding Ordinary Shares shall be determined after giving effect to the conversion or exercise of equity securities of the Company by the holder and its affiliates since the date as of which such number of issued and outstanding Ordinary Shares was reported. By written notice to the Company, the holder of a Warrant may from time to time increase or decrease the Maximum Percentage applicable to such holder to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company.

4. Adjustments.

4.1. Share Capitalizations.

4.1.1. Sub-Divisions. If after the date hereof, and subject to the provisions of Section 4.6 below, the number of issued and outstanding Ordinary Shares is increased by a capitalization or share dividend of Ordinary Shares, or by a sub-division of Ordinary Shares or other similar event, then, on the effective date of such share capitalization, sub-division or similar event, the number of Ordinary Shares issuable on exercise of each Warrant shall be increased in proportion to such increase in the issued and outstanding Ordinary Shares. A rights offering to all holders of Ordinary Shares entitling holders to purchase Ordinary Shares at a price less than the “Historical Fair Market Value” (as defined below) shall be deemed a capitalization of a number of Ordinary Shares equal to the product of (i) the number of Ordinary Shares actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for the Ordinary Shares) multiplied by (ii) one (1) minus the quotient of (x) the price per Ordinary Share paid in such rights offering divided by (y) the Historical Fair Market Value. For purposes of this subsection 4.1.1, (i) if the rights offering is for securities convertible into or exercisable for Ordinary Shares, in determining the price payable for Ordinary Shares, there shall be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (ii) “**Historical Fair Market Value**” means the volume weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the first date on which the Ordinary Shares trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights. No Ordinary Shares shall be issued at less than their par value.

4.1.2. Extraordinary Dividends. If the Company, at any time while the Warrants are outstanding and unexpired, pays to the holders of Ordinary Shares a dividend or ~~make~~makes a distribution in cash, securities or other assets on account of such Ordinary Shares (or other shares into which the Warrants are convertible), other than (a) as described in subsection 4.1.1 above, (b) Ordinary Cash Dividends (as defined below), (c) to satisfy the redemption rights of the holders of the Ordinary Shares in connection with a proposed initial Business Combination, (d) to satisfy the redemption rights of the holders of the Ordinary Shares in connection with a shareholder vote to amend the Company’s amended and restated memorandum and articles of association (i) to modify the substance or timing of the Company’s obligation to allow redemptions in connection with the Company’s initial Business Combination or to redeem 100% of the Company’s public shares if it does not complete its initial Business Combination within the time period required by the Company’s Amended and Restated Memorandum and Articles of Association, as amended from time to time, or (ii) with respect to any other provision relating to shareholders’ rights or pre-initial Business Combination activity, (e) as a result of the repurchase of Ordinary Shares by the Company if a proposed initial Business Combination is presented to the shareholders of the Company for approval or (f) in connection with the redemption of public shares upon the failure of the Company to complete its initial Business Combination and any subsequent distribution of its assets upon its liquidation (any such non-excluded event being referred to herein as an “**Extraordinary Dividend**”), then the Warrant Price shall be decreased, effective immediately after the effective date of such Extraordinary



Dividend, by the amount of cash and/or the fair market value (as determined by the Company's board of directors (the "**Board**"), in good faith) of any securities or other assets paid on each Ordinary Share in respect of such Extraordinary Dividend. For purposes of this subsection 4.1.2, "**Ordinary Cash Dividends**" means any cash dividend or cash distribution which, when combined on a per share basis, with the per share amounts of all other cash dividends and cash distributions paid on the Ordinary Shares during the 365-day period ending on the date of declaration of such dividend or distribution to the extent it does not exceed \$0.50 (which amount shall be adjusted to appropriately reflect any of the events referred to in other subsections of this Section 4 and excluding cash dividends or cash distributions that resulted in an adjustment to the Warrant Price or to the number of Ordinary Shares issuable on exercise of each Warrant).

4.2. Aggregation of Shares. If after the date hereof, and subject to the provisions of Section 4.6 hereof, the number of issued and outstanding Ordinary Shares is decreased by a consolidation, combination, reverse share sub-division or reclassification of Ordinary Shares or other similar event, then, on the effective date of such consolidation, combination, reverse share sub-division, reclassification or similar event, the number of Ordinary Shares issuable on exercise of each Warrant shall be decreased in proportion to such decrease in issued and outstanding Ordinary Shares.

4.3. Adjustments in Exercise Price. Whenever the number of Ordinary Shares purchasable upon the exercise of the Warrants is adjusted, as provided in subsection 4.1.1 or Section 4.2 above, the Warrant Price shall be adjusted (to the nearest cent) by multiplying such Warrant Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of Ordinary Shares purchasable upon the exercise of the Warrants immediately prior to such adjustment, and (y) the denominator of which shall be the number of Ordinary Shares so purchasable immediately thereafter.

4.4. Raising of the Capital in Connection with the Initial Business Combination

. If (x) the Company issues additional Ordinary Shares or equity-linked securities for capital raising purposes in connection with the closing of its initial Business Combination at an issue price or effective issue price of less than \$9.20 per Ordinary Share (with such issue price or effective issue price to be determined in good faith by the Board and, in the case of any such issuance to the Sponsor or its affiliates, without taking into account any Class B ordinary shares, par value \$0.0001 per share, of the Company held by the Sponsor or such affiliates, as applicable, prior to such issuance) (the "**Newly Issued Price**"), (y) the aggregate gross proceeds from such issuances represent more than 60% of the total equity proceeds, and interest thereon, available for the funding of the Company's initial Business Combination on the date of the completion of the Company's initial Business Combination (net of redemptions), and (z) the volume-weighted average trading price of Ordinary Shares during the ten (10) trading day period starting on the trading day prior to the day on which the Company consummates its initial Business Combination (such price, the "**Market Value**") is below \$9.20 per share, the Warrant Price shall be adjusted (to the nearest cent) to be equal to 115% of the higher of the Market Value and the Newly Issued Price, the \$18.00 per share redemption trigger price described in Section 6.1 ~~and Section 6.2~~ shall be adjusted (to the nearest cent) to be equal to 180% of the higher of the Market Value and the Newly Issued Price ~~and the \$10.00 per share redemption trigger price described in Section 6.2 shall be adjusted (to the nearest cent) to be equal to the higher of the Market Value and the Newly Issued Price.~~

4.5. Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the issued and outstanding Ordinary Shares (other than a change under Section 4.1 or Section 4.2 hereof or that solely affects the par value of such Ordinary Shares), or in the case of any merger or consolidation of the Company with or into another corporation (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or reorganization of the issued and outstanding Ordinary Shares), or in the case of any sale or conveyance to another corporation or entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the holders of the Warrants shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Warrants and in lieu of the Ordinary



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Shares of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares or stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the Warrants would have received if such holder had exercised his, her or its Warrant(s) immediately prior to such event (the “**Alternative Issuance**”); provided, however, that ~~(i) if the holders of the Ordinary Shares were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets constituting the Alternative Issuance for which each Warrant shall become exercisable shall be deemed to be the weighted average of the kind and amount received per share by the holders of the Ordinary Shares in such consolidation or merger that affirmatively make such election, and (ii) if a tender, exchange or redemption offer shall have been made to and accepted by the holders of the Ordinary Shares (other than a tender, exchange or redemption offer made by the Company in connection with redemption rights held by shareholders of the Company as provided for in the Company’s amended and restated memorandum and articles of association or as a result of the repurchase of Ordinary Shares by the Company if a proposed initial Business Combination is presented to the shareholders of the Company for approval) under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act) more than 50% of the issued and outstanding Ordinary Shares, the holder of a Warrant shall be entitled to receive as the Alternative Issuance, the highest amount of cash, securities or other property to which such holder would actually have been entitled as a shareholder if such Warrant holder had exercised the Warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the Ordinary Shares held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustments (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in this Section 4;~~ provided further that if less than 70% of the consideration receivable by the holders of the Ordinary Shares in the applicable event is payable in the form of shares in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the Registered Holder properly exercises the Warrant within thirty (30) days following the public disclosure of the consummation of such applicable event by the Company pursuant to a Current Report on Form 8-K filed with the Commission, the Warrant Price shall be reduced by an amount (in dollars) equal to the difference of (i) the Warrant Price in effect prior to such reduction minus (ii) (A) the Per Share Consideration (as defined below) (but in no event less than zero) minus (B) the Black-Scholes Warrant Value (as defined below). The “**Black-Scholes Warrant Value**” means the value of a Warrant immediately prior to the consummation of the applicable event based on the Black-Scholes Warrant Model for (x) with respect to a Public Warrant, a Capped American Call, and (y) with respect to a Private Placement Warrant, an Uncapped American Call, in each case, as provided on Bloomberg Financial Markets (assuming zero dividends) (“**Bloomberg**”). For purposes of calculating such amount, (i) Section 6 of this Agreement shall be taken into account, (ii) the price of each Ordinary Share shall be the volume weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event, (iii) the assumed volatility shall be the 90 day volatility obtained from the HVT function on Bloomberg determined as of the trading day immediately prior to the day of the announcement of the applicable event and (iv) the assumed risk-free interest rate shall correspond to the U.S. Treasury rate for a period equal to the remaining term of the Warrant. “**Per Share Consideration**” means (i) if the consideration paid to holders of the Ordinary Shares consists exclusively of cash, the amount of such cash per Ordinary Share, and (ii) in all other cases, the volume weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event. If any reclassification or reorganization also results in a change in Ordinary Shares covered by subsection 4.1.1, then such adjustment shall be made pursuant to subsection 4.1.1 or Sections 4.2, 4.3 and this Section 4.4. The provisions of this Section 4.4 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no

event shall the Warrant Price be reduced to less than the par value per share issuable upon exercise of such Warrant.

4.6. Notices of Changes in Warrant. Upon every adjustment of the Warrant Price or the number of shares issuable upon exercise of a Warrant, the Company shall give written notice thereof to the Warrant Agent, which notice shall state the Warrant Price resulting from such adjustment and the increase or decrease, if any, in the number of shares purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in Sections 4.1, 4.2, 4.3, 4.4 or 4.5, the Company shall give written notice of the occurrence of such event to each holder of a Warrant, at the last address set forth for such holder in the Warrant Register, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

4.7. No Fractional Shares. Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares upon the exercise of Warrants. If, by reason of any adjustment made pursuant to this Section 4, the holder of any Warrant would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round down to the nearest whole number the number of Ordinary Shares to be issued to such holder.

4.8. Form of Warrant. The form of Warrant need not be changed because of any adjustment pursuant to this Section 4, and Warrants issued after such adjustment may state the same Warrant Price and the same number of shares as is stated in the Warrants initially issued pursuant to this Agreement; provided, however, that the Company may at any time in its sole discretion make any change in the form of Warrant that the Company may deem appropriate and that does not affect the substance thereof, and any Warrant thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant or otherwise, may be in the form as so changed.

## 5. Transfer and Exchange of Warrants.

5.1. Registration of Transfer. The Warrant Agent shall register the transfer, from time to time, of any outstanding Warrant upon the Warrant Register, upon surrender of such Warrant for transfer, properly endorsed with signatures properly guaranteed and accompanied by appropriate instructions for transfer. Upon any such transfer, a new Warrant representing an equal aggregate number of Warrants shall be issued and the old Warrant shall be cancelled by the Warrant Agent. In the case of certificated Warrants, the Warrants so cancelled shall be delivered by the Warrant Agent to the Company from time to time upon request.

5.2. Procedure for Surrender of Warrants. Warrants may be surrendered to the Warrant Agent, together with a written request for exchange or transfer, and thereupon the Warrant Agent shall issue in exchange therefor one or more new Warrants as requested by the Registered Holder of the Warrants so surrendered, representing an equal aggregate number of Warrants; provided, however, that except as otherwise provided herein or with respect to any Book-Entry Warrant, each Book-Entry Warrant may be transferred only in whole and only to the Depositary, to another nominee of the Depositary, to a successor depository, or to a nominee of a successor depository; provided further, however that in the event that a Warrant surrendered for transfer bears a restrictive legend (as in the case of the Private Placement Warrants), the Warrant Agent shall not cancel such Warrant and issue new Warrants in exchange thereof until the Warrant Agent has received an opinion of counsel for the Company stating that such transfer may be made and indicating whether the new Warrants must also bear a restrictive legend.

5.3. Fractional Warrants. The Warrant Agent shall not be required to effect any registration of transfer or exchange which shall result in the issuance of a warrant certificate or book-entry position for a fraction of a warrant, except as part of the Units.

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5.4. Service Charges. No service charge shall be made for any exchange or registration of transfer of Warrants.

5.5. Warrant Execution and Countersignature. The Warrant Agent is hereby authorized to countersign and to deliver, in accordance with the terms of this Agreement, the Warrants required to be issued pursuant to the provisions of this Section 5, and the Company, whenever required by the Warrant Agent, shall supply the Warrant Agent with Warrants duly executed on behalf of the Company for such purpose.

~~5.6. Transfer of Warrants. Prior to the Detachment Date, the Public Warrants may be transferred or exchanged only together with the Unit in which such Warrant is included, and only for the purpose of effecting, or in conjunction with, a transfer or exchange of such Unit. Furthermore, each transfer of a Unit on the register relating to such Units shall operate also to transfer the Warrants included in such Unit. Notwithstanding the foregoing, the provisions of this Section 5.6 shall have no effect on any transfer of Warrants on and after the Detachment Date.~~

## 6. Redemption.

6.1. Redemption of Warrants for Cash. ~~Subject to Section 6.5 hereof, not~~ Not less than all of the outstanding Public Warrants may be redeemed, at the option of the Company, at any time during the Exercise Period, at the office of the Warrant Agent, upon notice to the Registered Holders of the Public Warrants, as described in Section 6.3 below, at a Redemption Price of \$0.01 per Public Warrant, provided that (a) the Reference Value equals or exceeds \$18.00 per share (subject to adjustment in compliance with Section 4 hereof) and (b) there is an effective registration statement covering the issuance of the Ordinary Shares issuable upon exercise of the Public Warrants, and a current prospectus relating thereto, available throughout the 30-day Redemption Period (as defined in Section 6.3 below).

~~6.2. Redemption of Warrants for Ordinary Shares. Subject to Section 6.5 hereof, not less than all of the outstanding Warrants may be redeemed, at the option of the Company, at any time during the Exercise Period, at the office of the Warrant Agent, upon notice to the Registered Holders of the Warrants, as described in Section 6.3 below, at a Redemption Price of \$0.10 per Warrant, provided that (i) the Reference Value equals or exceeds \$10.00 per share (subject to adjustment in compliance with Section 4 hereof) and (ii) if the Reference Value is less than \$18.00 per share (subject to adjustment in compliance with Section 4 hereof), the Private Placement Warrants are also concurrently called for redemption on the same terms as the outstanding Public Warrants. During the 30-day Redemption Period in connection with a redemption pursuant to this Section 6.2, Registered Holders of the Warrants may elect to exercise their Warrants on a "cashless basis" pursuant to subsection 3.3.1 and receive a number of Ordinary Shares determined by reference to the table below, based on the Redemption Date (calculated for purposes of the table as the period to expiration of the Warrants) and the "Redemption Fair Market Value" (as such term is defined in this Section 6.2) (a "Make Whole Exercise"). Solely for purposes of this Section 6.2, the "Redemption Fair Market Value" shall mean the volume weighted average price of the Ordinary Shares for the ten (10) trading days immediately following the date on which notice of redemption pursuant to this Section 6.2 is sent to the Registered Holders. In connection with any redemption pursuant to this Section 6.2, the Company shall provide the Registered Holders with the Redemption Fair Market Value no later than one (1) Business Day after the ten (10) trading day period described above ends.~~

6.2. [RESERVED].

Redemption Date	Redemption Fair Market Value of Ordinary Shares (period to expiration of warrants)								
	£-10.00	11.00	12.00	13.00	14.00	15.00	16.00	17.00	<sup>3</sup> -18.00
60 months	0.261	0.281	0.297	0.311	0.324	0.337	0.348	0.358	0.361
57 months	0.257	0.277	0.294	0.310	0.324	0.337	0.348	0.358	0.361
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.361
51 months	0.246	0.268	0.287	0.304	0.320	0.333	0.346	0.357	0.361
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.361
45 months	0.235	0.258	0.279	0.298	0.315	0.330	0.343	0.356	0.361
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.361
39 months	0.221	0.246	0.269	0.290	0.309	0.325	0.340	0.354	0.361
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.361
33 months	0.205	0.232	0.257	0.280	0.301	0.320	0.337	0.352	0.361
30 months	0.196	0.224	0.250	0.274	0.297	0.316	0.335	0.351	0.361
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.350	0.361
24 months	0.173	0.204	0.233	0.260	0.285	0.308	0.329	0.348	0.361
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.361
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.361
15 months	0.130	0.164	0.197	0.230	0.262	0.291	0.317	0.342	0.361
12 months	0.111	0.146	0.181	0.216	0.250	0.282	0.312	0.339	0.361
9 months	0.090	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.361
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.361
3 months	0.034	0.065	0.104	0.150	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

The exact Redemption Fair Market Value and Redemption Date may not be set forth in the table above, in which case, if the Redemption Fair Market Value is between two values in the table or the Redemption Date is between two redemption dates in the table, the number of Ordinary Shares to be issued for each Warrant exercised in a Make-Whole Exercise shall be determined by a straight line interpolation between the number of shares set forth for the higher and lower Redemption Fair Market Values and the earlier and later redemption dates, as applicable, based on a 365- or 366-day year, as applicable:

The share prices set forth in the column headings of the table above shall be adjusted as of any date on which the number of shares issuable upon exercise of a Warrant or the Exercise Price is adjusted pursuant to Section 4 hereof. If the number of shares issuable upon exercise of a Warrant is adjusted pursuant to Section 4 hereof, the adjusted share prices in the column headings shall equal the share prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the number of shares deliverable upon exercise of a Warrant immediately prior to such adjustment and the denominator of which is the number of shares deliverable upon exercise of a Warrant as so adjusted. The number of shares in the table above shall be adjusted in the same manner and at the same time as the number of shares issuable upon exercise of a Warrant. If the Exercise Price of a warrant is adjusted, (a) in the case of an adjustment pursuant to Section 4.4 hereof, the adjusted share prices in the column headings shall equal the share prices immediately prior to such adjustment multiplied by a fraction, the numerator of which is the higher of the Market Value and the Newly Issued Price and the denominator of which is \$10.00 and (b) in the case of an adjustment pursuant to Section 4.1.2 hereof, the adjusted share prices in the column headings shall equal the share prices immediately prior to such adjustment less the decrease in the Exercise Price pursuant to such Exercise Price adjustment. In no event shall the number of shares issued in connection with a Make-Whole Exercise exceed 0.361 Ordinary Shares per Warrant (subject to adjustment)

6.3. Date Fixed for, and Notice of, Redemption; Redemption Price; Reference Value. In the event that the Company elects to redeem the Public Warrants pursuant to Sections 6.1 or 6.2, the Company shall fix a

date for the redemption (the “**Redemption Date**”). Notice of redemption shall be mailed by first class mail, postage prepaid, by the Company not less than thirty (30) days prior to the Redemption Date (the “**30-day Redemption Period**”) to the Registered Holders of the [Public](#) Warrants to be redeemed at their last addresses as they shall appear on the registration books. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Registered Holder received such notice. As used in this Agreement, (a) “**Redemption Price**” shall mean the price per [Public](#) Warrant at which any [Public](#) Warrants are redeemed pursuant to ~~Sections~~[Section 6.1-or 6.2](#) and (b) “**Reference Value**” shall mean the last reported sales price of the Ordinary Shares for any twenty (20) trading days within the thirty (30) trading-day period ending on the third trading day prior to the date on which notice of the redemption is given.

6.4. Exercise After Notice of Redemption. The [Public](#) Warrants may be exercised, for cash ~~(or on a “cashless basis” in accordance with Section 6.2 of this Agreement)~~ at any time after notice of redemption shall have been given by the Company pursuant to [Section 6.3](#) hereof and prior to the Redemption Date. On and after the Redemption Date, the record holder of the [Public](#) Warrants shall have no further rights except to receive, upon surrender of the [Public](#) Warrants, the Redemption Price.

~~6.5. Exclusion of Private Placement Warrants. The Company agrees that (a) the redemption rights provided in Section 6.1 hereof shall not apply to the Private Placement Warrants if at the time of the redemption such Private Placement Warrants continue to be held by the Sponsor or its Permitted Transferees and (b) if the Reference Value equals or exceeds \$18.00 per share (subject to adjustment in compliance with Section 4 hereof), the redemption rights provided in Section 6.2 hereof shall not apply to the Private Placement Warrants if at the time of the redemption such Private Placement Warrants continue to be held by the Sponsor or its Permitted Transferees. However, once such Private Placement Warrants are transferred (other than to Permitted Transferees in accordance with Section 2.6 hereof), the Company may redeem the Private Placement Warrants pursuant to Section 6.1 or 6.2 hereof, provided that the criteria for redemption are met, including the opportunity of the holder of such Private Placement Warrants to exercise the Private Placement Warrants prior to redemption pursuant to Section 6.4 hereof. Private Placement Warrants that are transferred to persons other than Permitted Transferees shall upon such transfer cease to be Private Placement Warrants and shall become Public Warrants under this Agreement, including for purposes of Section 9.8 hereof.~~

7. Other Provisions Relating to Rights of Holders of Warrants.

7.1. No Rights as Shareholder. A Warrant does not entitle the Registered Holder thereof to any of the rights of a shareholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights, to vote or to consent or to receive notice as shareholders in respect of the meetings of shareholders or the election of directors of the Company or any other matter.

7.2. Lost, Stolen, Mutilated, or Destroyed Warrants. If any Warrant is lost, stolen, mutilated, or destroyed, the Company and the Warrant Agent may on such terms as to indemnify or otherwise as they may in their discretion impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination, tenor, and date as the Warrant so lost, stolen, mutilated, or destroyed. Any such new Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Warrant shall be at any time enforceable by anyone.

7.3. Reservation of Ordinary Shares. The Company shall at all times reserve and keep available a number of its authorized but unissued Ordinary Shares that shall be sufficient to permit the exercise in full of all outstanding Warrants issued pursuant to this Agreement.

~~7.4. Registration of Ordinary Shares; Cashless Exercise at Company’s Option.~~

~~7.4.17.4.~~ 7.4.17.4. Registration of the Ordinary Shares. The Company agrees that as soon as practicable, but in no event later than fifteen (15) Business Days after the closing of its initial Business Combination, it shall use its commercially reasonable efforts to file with the Commission a registration statement for the registration, under the Securities Act, of the Ordinary Shares issuable upon exercise of the Warrants. If the Warrants are exercisable for a security other than the Ordinary Shares pursuant to this Agreement, the Warrants may be exercised for such security. At such time as the Warrants become exercisable for a security other than the Ordinary Shares, the Company (or any successor company) will use its commercially reasonable efforts to register under the Securities Act the security issuable upon the exercise of the warrants within (20) twenty business days of the closing of an initial Business Combination. The Company shall use its commercially reasonable efforts to cause the same to become effective within sixty (60) Business Days following the closing of its initial Business Combination and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration or redemption of the Warrants in accordance with the provisions of this Agreement. If any such registration statement has not been declared effective by the sixtieth (60<sup>th</sup>) Business Day following the closing of the Business Combination, holders of the Warrants shall have the right, during the period beginning on the sixty-first (61<sup>st</sup>) Business Day after the closing of the Business Combination and ending upon such registration statement being declared effective by the Commission, and during any other period when the Company shall fail to have maintained an effective registration statement covering the issuance of the Ordinary Shares issuable upon exercise of the Warrants, to exercise such Warrants on a “cashless basis,” by exchanging the Warrants (in accordance with Section 3(a)(9) of the Securities Act or another exemption) for that number of Ordinary Shares equal to the ~~lesser of (A) the~~ quotient obtained by dividing (x) the product of the number of Ordinary Shares underlying the Warrants, multiplied by the excess of the “Fair Market Value” (as defined below) less the Warrant Price by (y) the Fair Market Value ~~and (B) 0.361~~ **Ordinary Shares per Warrant**. Solely for purposes of this ~~subsection 7.4.1~~ Section 7.4, “Fair Market Value” shall mean the volume-weighted average price of the Ordinary Shares during the ten (10) trading day period ending on the trading day prior to the date that notice of exercise is received by the Warrant Agent from the holder of such Warrants or its securities broker or intermediary. The date that notice of “cashless exercise” is received by the Warrant Agent shall be conclusively determined by the Warrant Agent. In connection with the “cashless exercise” of a **Public** Warrant, the Company shall, upon request, provide the Warrant Agent with an opinion of counsel for the Company (which shall be an outside law firm with securities law experience) stating that (i) the exercise of the Warrants on a “cashless basis” in accordance with this ~~subsection 7.4.1~~ Section 7.4 is not required to be registered under the Securities Act and (ii) the Ordinary Shares issued upon such exercise shall be freely tradable under United States federal securities laws by anyone who is not an affiliate (as such term is defined in Rule 144 under the Securities Act) of the Company and, accordingly, shall not be required to bear a restrictive legend. ~~Except as provided in subsection 7.4.2, for~~ For the avoidance of doubt, unless and until all of the Warrants have been exercised or have expired, the Company shall continue to be obligated to comply with its registration obligations under the first three sentences of this ~~subsection 7.4.1~~ Section 7.4.

~~7.4.2. Cashless Exercise at Company's Option. If the Ordinary Shares are at the time of any exercise of a Public Warrant not listed on a national securities exchange such that they satisfy the definition of a “covered security” under Section 18(b)(1) of the Securities Act, the Company may, at its option, (i) require holders of Public Warrants who exercise Public Warrants to exercise such Public Warrants on a “cashless basis” in accordance with Section 3(a)(9) of the Securities Act as described in subsection 7.4.1 and (ii) in the event the Company so elects, the Company shall (x) not be required to file or maintain in effect a registration statement for the registration, under the Securities Act, of the Ordinary Shares issuable upon exercise of the Warrants, notwithstanding anything in this Agreement to the contrary, and (y) use its commercially reasonable efforts to register or qualify for sale the Ordinary Shares issuable upon exercise of the Public Warrant under applicable blue sky laws to the extent an exemption is not available.~~

8. Concerning the Warrant Agent and Other Matters.

8.1. Payment of Taxes. The Company shall from time to time promptly pay all taxes and charges that may be imposed upon the Company or the Warrant Agent in respect of the issuance or delivery of Ordinary

Shares upon the exercise of the Warrants, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrants or such shares.

8.2. Resignation, Consolidation, or Merger of Warrant Agent.

8.2.1. Appointment of Successor Warrant Agent. The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving sixty (60) days' notice in writing to the Company. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor Warrant Agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after it has been notified in writing of such resignation or incapacity by the Warrant Agent or by the holder of a Warrant (who shall, with such notice, submit his, her or its Warrant for inspection by the Company), then the holder of any Warrant may apply to the Supreme Court of the State of New York for the County of New York for the appointment of a successor Warrant Agent at the Company's cost. Any successor Warrant Agent, whether appointed by the Company or by such court, shall be a corporation or other entity organized and existing under the laws of the State of New York, in good standing and having its principal office in the United States of America, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. After appointment, any successor Warrant Agent shall be vested with all the authority, powers, rights, immunities, duties, and obligations of its predecessor Warrant Agent with like effect as if originally named as Warrant Agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor Warrant Agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor Warrant Agent all the authority, powers, and rights of such predecessor Warrant Agent hereunder; and upon request of any successor Warrant Agent the Company shall make, execute, acknowledge, and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Warrant Agent all such authority, powers, rights, immunities, duties, and obligations.

8.2.2. Notice of Successor Warrant Agent. In the event a successor Warrant Agent shall be appointed, the Company shall give notice thereof to the predecessor Warrant Agent and the Transfer Agent for the Ordinary Shares not later than the effective date of any such appointment.

8.2.3. Merger or Consolidation of Warrant Agent. Any entity into which the Warrant Agent may be merged or with which it may be consolidated or any entity resulting from any merger or consolidation to which the Warrant Agent shall be a party shall be the successor Warrant Agent under this Agreement without any further act.

8.3. Fees and Expenses of Warrant Agent.

8.3.1. Remuneration. The Company agrees to pay the Warrant Agent reasonable remuneration for its services as such Warrant Agent hereunder and shall, pursuant to its obligations under this Agreement, reimburse the Warrant Agent upon demand for all expenditures that the Warrant Agent may reasonably incur in the execution of its duties hereunder.

8.3.2. Further Assurances. The Company agrees to perform, execute, acknowledge, and deliver or cause to be performed, executed, acknowledged, and delivered all such further and other acts, instruments, and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Agreement.

8.4. Liability of Warrant Agent.

8.4.1. Reliance on Company Statement. Whenever in the performance of its duties under this Agreement, the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or

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established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a statement signed by the Chief Executive Officer, the President, the Chief Financial Officer, Chief Operating Officer, the General Counsel, the Secretary or the Chairman of the Board of the Company and delivered to the Warrant Agent. The Warrant Agent may rely upon such statement for any action taken or suffered in good faith by it pursuant to the provisions of this Agreement.

8.4.2. Indemnity. The Warrant Agent shall be liable hereunder only for its own gross negligence, willful misconduct, fraud or bad faith. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all liabilities, including judgments, out-of-pocket costs and reasonable outside counsel fees, for anything done or omitted by the Warrant Agent in the execution of this Agreement, except as a result of the Warrant Agent's gross negligence, willful misconduct, fraud or bad faith.

8.4.3. Exclusions. The Warrant Agent shall have no responsibility with respect to the validity of this Agreement or with respect to the validity or execution of any Warrant (except its countersignature thereof). The Warrant Agent shall not be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant. The Warrant Agent shall not be responsible to make any adjustments required under the provisions of Section 4 hereof or responsible for the manner, method, or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Ordinary Shares to be issued pursuant to this Agreement or any Warrant or as to whether any Ordinary Shares shall, when issued, be valid and fully paid and nonassessable.

8.5. Acceptance of Agency. The Warrant Agent hereby accepts the agency established by this Agreement and agrees to perform the same upon the terms and conditions herein set forth and among other things, shall account promptly to the Company with respect to Warrants exercised and concurrently account for, and pay to the Company, all monies received by the Warrant Agent for the purchase of Ordinary Shares through the exercise of the Warrants.

8.6. Waiver. The Warrant Agent has no right of set-off or any other right, title, interest or claim of any kind ("**Claim**") in, or to any distribution of, the Trust Account (as defined in that certain Investment Management Trust Agreement, dated as of the date hereof, by and between the Company and Continental Stock Transfer & Trust Company as trustee thereunder) and hereby agrees not to seek recourse, reimbursement, payment or satisfaction for any Claim against the Trust Account for any reason whatsoever. The Warrant Agent hereby waives any and all Claims against the Trust Account and any and all rights to seek access to the Trust Account.

## 9. Miscellaneous Provisions.

9.1. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns.

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9.2. Notices. Any notice, statement or demand authorized by this Agreement to be given or made by the Warrant Agent or by the holder of any Warrant to or on the Company shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Horizon Acquisition Corporation  
600 Steamboat Road, Suite 200  
Greenwich, CT 06830  
Attention: Chief Executive Officer

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with a copy to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Christian O. Nagler  
Wayne E. Williams

Any notice, statement or demand authorized by this Agreement to be given or made by the holder of any Warrant or by the Company to or on the Warrant Agent shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

Continental Stock Transfer & Trust Company  
One State Street, 30th Floor  
New York, NY 10004  
Attention: Compliance Department

9.3. Applicable Law and Exclusive Forum. The validity, interpretation, and performance of this Agreement and of the Warrants shall be governed in all respects by the laws of the State of New York. Subject to applicable law, the Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive forum for any such action, proceeding or claim. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum. Notwithstanding the foregoing, the provisions of this paragraph will not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the federal district courts of the United States of America are the sole and exclusive forum.

Any person or entity purchasing or otherwise acquiring any interest in the Warrants shall be deemed to have notice of and to have consented to the forum provisions in this Section 9.3. If any action, the subject matter of which is within the scope the forum provisions above, is filed in a court other than a court located within the State of New York or the United States District Court for the Southern District of New York (a “foreign action”) in the name of any warrant holder, such warrant holder shall be deemed to have consented to: (x) the personal jurisdiction of the state and federal courts located within the State of New York or the United States District Court for the Southern District of New York in connection with any action brought in any such court to enforce the forum provisions (an “enforcement action”), and (y) having service of process made upon such warrant holder in any such enforcement action by service upon such warrant holder’s counsel in the foreign action as agent for such warrant holder.

9.4. Persons Having Rights under this Agreement. Nothing in this Agreement shall be construed to confer upon, or give to, any person, corporation or other entity other than the parties hereto and the Registered Holders of the Warrants any right, remedy, or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the Registered Holders of the Warrants.

9.5. Examination of the Warrant Agreement. A copy of this Agreement shall be available at all reasonable times at the office of the Warrant Agent in the United States of America, for inspection by the

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Registered Holder of any Warrant. The Warrant Agent may require any such holder to submit such holder's Warrant for inspection by the Warrant Agent.

9.6. Counterparts. This Agreement may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

9.7. Effect of Headings. The section headings herein are for convenience only and are not part of this Agreement and shall not affect the interpretation thereof.

9.8. Amendments. This Agreement may be amended by the parties hereto without the consent of any Registered Holder for the purpose of (i) curing any ambiguity or to correct any mistake, including to conform the provisions hereof to the description of the terms of the Warrants and this Agreement set forth in the Prospectus, or defective provision contained herein or (ii) adding or changing any provisions with respect to matters or questions arising under this Agreement as the parties may deem necessary or desirable and that the parties deem shall not adversely affect the rights of the Registered Holders under this Agreement. All other modifications or amendments, shall require the vote or written consent of the Registered Holders of 65% of the then-outstanding Public Warrants and, solely with respect to any amendment to the terms of the Private Placement Warrants or any provision of this Agreement with respect to the Private Placement Warrants, 65% of the then-outstanding Private Placement Warrants. Notwithstanding the foregoing, the Company may lower the Warrant Price or extend the duration of the Exercise Period pursuant to Sections 3.1 and 3.2, respectively, without the consent of the Registered Holders.

9.9. Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Exhibit A Form of Warrant Certificate

Exhibit B Legend — Private Placement Warrants

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

HORIZON ACQUISITION CORPORATION

By: ~~/s/ Todd Bochly~~

Name: ~~Todd Bochly~~

Title: ~~Chairman, Chief Executive Officer and  
Chief Financial Officer~~

CONTINENTAL STOCK TRANSFER & TRUST  
COMPANY, as Warrant Agent

By: ~~/s/ Isaac Kagan~~

Name: ~~Isaac Kagan~~

Title: ~~Vice President~~

[Signature Page to Warrant Agreement]

EXHIBIT A

[FACE]

Number

Warrants

THIS WARRANT SHALL BE VOID IF NOT EXERCISED PRIOR TO THE EXPIRATION OF THE EXERCISE PERIOD PROVIDED FOR IN THE WARRANT AGREEMENT DESCRIBED BELOW

Horizon Acquisition Corporation Incorporated Under the Laws of the Cayman Islands

CUSIP [●]

Warrant Certificate

*This Warrant Certificate certifies that* [ ], or registered assigns, is the registered holder of [ ] warrant(s) (the “**Warrants**” and each, a “**Warrant**”) to purchase Class A ordinary shares, \$0.0001 par value (“**Ordinary Shares**”), of Horizon Acquisition Corporation, a Cayman Islands exempted company (the “**Company**”). Each Warrant entitles the holder, upon exercise during the period set forth in the Warrant Agreement referred to below, to receive from the Company that number of fully paid and nonassessable Ordinary Shares as set forth below, at the exercise price (the “**Exercise Price**”) as determined pursuant to the Warrant Agreement, payable in lawful money (or through “**cashless exercise**” as provided for in the Warrant Agreement) of the United States of America upon surrender of this Warrant Certificate and payment of the Exercise Price at the office or agency of the Warrant Agent referred to below, subject to the conditions set forth herein and in the Warrant Agreement. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Each whole Warrant is initially exercisable for one fully paid and non-assessable Ordinary Share. Fractional shares shall not be issued upon exercise of any Warrant. If, upon the exercise of Warrants, a holder would be entitled to receive a fractional interest in an Ordinary Share, the Company shall, upon exercise, round down to the nearest whole number the number of Ordinary Shares to be issued to the Warrant holder. The number of Ordinary Shares issuable upon exercise of the Warrants is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

The initial Exercise Price per one Ordinary Share for any Warrant is equal to \$11.50 per share. The Exercise Price is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

Subject to the conditions set forth in the Warrant Agreement, the Warrants may be exercised only during the Exercise Period and to the extent not exercised by the end of such Exercise Period, such Warrants shall become void. The Warrants may be redeemed, subject to certain conditions, as set forth in the Warrant Agreement.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, as such term is used in the Warrant Agreement. This Warrant Certificate shall be governed by and construed in accordance with the internal laws of the State of New York.

HORIZON ACQUISITION CORPORATION

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

CONTINENTAL STOCK TRANSFER & TRUST  
COMPANY, AS WARRANT AGENT

By: \_\_\_\_\_  
Name:  
Title:

[Form of Warrant Certificate]

[Reverse]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants entitling the holder on exercise to receive [ ] Ordinary Shares and are issued or to be issued pursuant to a Warrant Agreement dated as of August 25, 2020 (the “**Warrant Agreement**”), duly executed and delivered by the Company to Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (the “**Warrant Agent**”), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words “**holders**” or “**holder**” meaning the Registered Holders or Registered Holder, respectively) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Warrants may be exercised at any time during the Exercise Period set forth in the Warrant Agreement. The holder of Warrants evidenced by this Warrant Certificate may exercise them by surrendering this Warrant Certificate, with the form of Election to Purchase set forth hereon properly completed and executed, together with payment of the Exercise Price as specified in the Warrant Agreement (or through “*cashless exercise*” as provided for in the Warrant Agreement) at the principal corporate trust office of the Warrant Agent. In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or his, her or its assignee, a new Warrant Certificate evidencing the number of Warrants not exercised.

Notwithstanding anything else in this Warrant Certificate or the Warrant Agreement, no Warrant may be exercised unless at the time of exercise (i) a registration statement covering the issuance of the Ordinary Shares to be issued upon exercise is effective under the Securities Act and (ii) a prospectus thereunder relating to the Ordinary Shares is current, except through “*cashless exercise*” as provided for in the Warrant Agreement.

The Warrant Agreement provides that upon the occurrence of certain events the number of Ordinary Shares issuable upon exercise of the Warrants set forth on the face hereof may, subject to certain conditions, be adjusted. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a fractional interest in an Ordinary Share, the Company shall, upon exercise, round down to the nearest whole number of Ordinary Shares to be issued to the holder of the Warrant.

Warrant Certificates, when surrendered at the principal corporate trust office of the Warrant Agent by the Registered Holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the Registered Holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a shareholder of the Company.

Election to Purchase

(To Be Executed Upon Exercise of Warrant)

The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, to receive [ ] Ordinary Shares and herewith tenders payment for such Ordinary Shares to the order of Horizon Acquisition Corporation (the “**Company**”) in the amount of \$[ ] in accordance with the terms hereof. The undersigned requests that a certificate for such Ordinary Shares be registered in the name of [ ], whose address is [ ] and that such Ordinary Shares be delivered to [ ] whose address is [ ]. If said [ ] number of Ordinary Shares is less than all of the Ordinary Shares purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the remaining balance of such Ordinary Shares be registered in the name of [ ], whose address is [ ] and that such Warrant Certificate be delivered to [ ], whose address is [ ].

~~In the event that the Warrant has been called for redemption by the Company pursuant to Section 6.2 of the Warrant Agreement and a holder thereof elects to exercise its Warrant pursuant to a Make-Whole Exercise, the number of Ordinary Shares that this Warrant is exercisable for shall be determined in accordance with subsection 3.3.1(c) or Section 6.2 of the Warrant Agreement, as applicable.~~

~~In the event that the Warrant is a Private Placement Warrant that is to be exercised on a “cashless” basis pursuant to subsection 3.3.1(c) of the Warrant Agreement, the number of Ordinary Shares that this Warrant is exercisable for shall be determined in accordance with subsection 3.3.1(c) of the Warrant Agreement.~~

In the event that the Warrant is to be exercised on a “cashless” basis pursuant to Section 7.4 of the Warrant Agreement, the number of Ordinary Shares that this Warrant is exercisable for shall be determined in accordance with Section 7.4 of the Warrant Agreement.

In the event that the Warrant may be exercised, to the extent allowed by the Warrant Agreement, through cashless exercise (i) the number of Ordinary Shares that this Warrant is exercisable for would be determined in accordance with the relevant section of the Warrant Agreement which allows for such cashless exercise and (ii) the holder hereof shall complete the following: The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, through the cashless exercise provisions of the Warrant Agreement, to receive Ordinary Shares. If said number of shares is less than all of the Ordinary Shares purchasable hereunder (after giving effect to the cashless exercise), the undersigned requests that a new Warrant Certificate representing the remaining balance of such Ordinary Shares be registered in the name of [ ], whose address is [ ] and that such Warrant Certificate be delivered to [ ], whose address is [ ].

[Signature Page Follows]

Date: [ ], 20

(Signature)

(Address)

\_\_\_\_\_  
(Tax Identification Number)

Signature Guaranteed:

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THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15 UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED).



EXHIBIT B

LEGEND

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. IN ADDITION, SUBJECT TO ANY ADDITIONAL LIMITATIONS ON TRANSFER DESCRIBED IN THE LETTER AGREEMENT BY AND AMONG HORIZON ACQUISITION CORPORATION (THE “**COMPANY**”), HORIZON SPONSOR, LLC AND THE OTHER PARTIES THERETO, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD OR TRANSFERRED PRIOR TO THE DATE THAT IS THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE COMPANY COMPLETES ITS INITIAL BUSINESS COMBINATION (AS DEFINED IN SECTION 3 OF THE WARRANT AGREEMENT REFERRED TO HEREIN) EXCEPT TO A PERMITTED TRANSFEREE (AS DEFINED IN SECTION 2 OF THE WARRANT AGREEMENT) WHO AGREES IN WRITING WITH THE COMPANY TO BE SUBJECT TO SUCH TRANSFER PROVISIONS.

SECURITIES EVIDENCED BY THIS CERTIFICATE AND CLASS A ORDINARY SHARES OF THE COMPANY ISSUED UPON EXERCISE OF SUCH SECURITIES SHALL BE ENTITLED TO REGISTRATION RIGHTS UNDER A REGISTRATION AND SHAREHOLDER RIGHTS AGREEMENT TO BE EXECUTED BY THE COMPANY.

NO. [            ] WARRANT

PART II: INFORMATION NOT REQUIRED IN PROSPECTUS

**Item 20. Indemnification of Directors and Officers.**

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the “DGCL”) empowers a corporation to indemnify any person who was or is a party or who 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 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), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding 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, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation 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 acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the 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, 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 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 145 further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person’s heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who 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 any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation’s certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (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 which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit.

Additionally, the Vivid Seats PubCo Amended and Restated Charter limits the liability of Vivid Seats PubCo’s directors to the fullest extent permitted by the DGCL, and the Vivid Seats PubCo Amended and

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Restated Bylaws provide that Vivid Seats PubCo will indemnify them to the fullest extent permitted by such law. Vivid Seats PubCo has entered into and expects to continue to enter into agreements to indemnify Vivid Seats PubCo's directors, executive officers and other employees as determined by Vivid Seats PubCo's board of directors. Under the terms of such indemnification agreements, Vivid Seats PubCo is required to indemnify each of its directors and officers, to the fullest extent permitted by the laws of the state of Delaware, if the basis of the indemnitee's involvement was by reason of the fact that the indemnitee is or was Vivid Seats PubCo's director or officer or was serving at Vivid Seats PubCo's request in an official capacity for another entity. Vivid Seats PubCo must indemnify its officers and directors against all reasonable fees, expenses, charges and other costs of any type or nature whatsoever, including any and all expenses and obligations paid or incurred in connection with investigating, defending, being a witness in, participating in (including on appeal), or preparing to defend, be a witness or participate in any completed, actual, pending or threatened action, suit, claim or proceeding, whether civil, criminal, administrative or investigative, or establishing or enforcing a right to indemnification under the indemnification agreement. The indemnification agreements also require Vivid Seats PubCo, if so requested, to advance all reasonable fees, expenses, charges and other costs that such director or officer incurred, provided that such person will return any such advance if it is ultimately determined that such person is not entitled to indemnification by Vivid Seats PubCo. Any claims for indemnification by Vivid Seats PubCo's directors and officers may reduce Vivid Seats PubCo's available funds to satisfy successful third-party claims against Vivid Seats PubCo and may reduce the amount of money available to Vivid Seats PubCo.

### **Item 21. Exhibits and Financial Statement Schedules**

<b>Exhibit No.</b>	<b>Description</b>
2.1†	<a href="#"><u>Transaction Agreement, dated as of April 21, 2021, by and among Horizon Acquisition Corporation, Horizon Sponsor, LLC, Hoya Topco, LLC, Hoya Intermediate, LLC and Vivid Seats Inc. (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex A).</u></a>
2.2†**	<a href="#"><u>Purchase, Sale and Redemption Agreement, dated as of April 21, 2021, by and among Hoya Topco, LLC, Hoya Intermediate, LLC, Vivid Seats Inc., Crescent Mezzanine Partners VIB, L.P., Crescent Mezzanine Partners VIC, L.P., NPS/Crescent Strategic Partnership II, LP, CM7C VS Equity Holdings, LP, Crescent Mezzanine Partners VIIB, L.P., CM6B Vivid Equity, Inc., CM6C Vivid Equity, Inc., CM7C VS Equity, LLC, CM7B VS Equity, LLC, Crescent Mezzanine Partners VI, L.P., Crescent Mezzanine Partners VII, L.P., Crescent Mezzanine Partners VII (LTL), L.P., CBDC Universal Equity, Inc., Crescent Capital Group, LP, solely in its capacity as the Crescent Representative and Horizon Acquisition Corporation, solely for purposes of Section 9.18 therein.</u></a>
2.3	<a href="#"><u>Form of Plan of Merger (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex K).</u></a>
3.1	<a href="#"><u>Amended and Restated Memorandum and Articles of Association of Horizon Acquisition Corporation (incorporated by reference to Exhibit 3.1 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
3.2	<a href="#"><u>Certificate of Incorporation of Vivid Seats Inc. (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex B).</u></a>
3.3	<a href="#"><u>Form of Amended and Restated Certificate of Incorporation of Vivid Seats Inc. (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex C).</u></a>
3.4	<a href="#"><u>Form of Amended and Restated Bylaws of Vivid Seats Inc. (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex D).</u></a>
4.1*	Specimen Class A Common Stock Certificate of Vivid Seats Inc.

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<b>Exhibit No.</b>	<b>Description</b>
4.2*	Specimen Warrant Certificate of Vivid Seats Inc.
4.3	<a href="#"><u>Warrant Agreement, dated August 25, 2020, between Continental Stock Transfer &amp; Trust Company and Horizon Acquisition Corporation (incorporated by reference to Exhibit 4.1 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
4.4**	<a href="#"><u>Form of New Warrant Agreement.</u></a>
5.1*	Opinion of Latham & Watkins LLP as to the validity of shares of Vivid Seats Class A common stock and the warrants.
10.1	<a href="#"><u>Exchange Agreement, dated as of April 21, 2021, by and among Horizon Acquisition Corporation and Horizon Sponsor, LLC (incorporated by reference to Exhibit 10.1 to Horizon Acquisition Corporation's Form 8-K/A, filed with the SEC on April 26, 2021).</u></a>
10.2	<a href="#"><u>Sponsor Agreement, dated as of April 21, 2021, by and among Horizon Sponsor, LLC, Horizon Acquisition Corporation and Hoya Topco, LLC (incorporated by reference to Exhibit 10.2 to Horizon Acquisition Corporation's Form 8-K/A, filed with the SEC on April 26, 2021).</u></a>
10.3	<a href="#"><u>Form of Amended and Restated Registration Rights Agreement (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex I).</u></a>
10.4	<a href="#"><u>Form of Subscription Agreement, by and among Horizon Acquisition Corporation, Vivid Seats Inc. and the undersigned subscriber party thereto (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex I).</u></a>
10.5	<a href="#"><u>Form of Tax Receivable Agreement (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex F).</u></a>
10.6	<a href="#"><u>Form of Stockholders' Agreement (attached to the proxy statement/prospectus/consent solicitation statement which forms a part of this registration statement as Annex E).</u></a>
10.7†	<a href="#"><u>First Lien Credit Agreement, dated as of June 30, 2017, among Hoya Midco, LLC, as borrower, Hoya Intermediate, LLC, the lenders and issuing banks from time to time party thereto, Barclays Bank PLC, as administrative agent, collateral agent, an issuing bank and swing line lender, and RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, as joint lead arrangers and joint bookrunners.</u></a>
10.8†	<a href="#"><u>Amendment No. 1, dated as of March 28, 2018, to the First Lien Credit Agreement, dated as of June 30, 2017, among Hoya Midco, LLC, as borrower, Hoya Intermediate, LLC, the lenders and issuing banks from time to time party thereto, Barclays Bank PLC, as administrative agent, collateral agent, an issuing bank and swing line lender, and RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, as joint lead arrangers and joint bookrunners.</u></a>
10.9†	<a href="#"><u>Amendment No. 2, dated as of July 2, 2018, to the First Lien Credit Agreement, dated as of June 30, 2017, among Hoya Midco, LLC, as borrower, Hoya Intermediate, LLC, the lenders and issuing banks from time to time party thereto, Barclays Bank PLC, as administrative agent, collateral agent, an issuing bank and swing line lender, and RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, as joint lead arrangers and joint bookrunners.</u></a>
10.10†	<a href="#"><u>Amendment No. 3, dated as of May 22, 2020, to the First Lien Credit Agreement, dated as of June 30, 2017, among Hoya Midco, LLC, as borrower, Hoya Intermediate, LLC, the lenders and issuing banks from time to time party thereto, Barclays Bank PLC, as administrative agent, collateral agent, an issuing bank and swing line lender, and RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, as joint lead arrangers and joint bookrunners.</u></a>
10.11†	<a href="#"><u>Credit Agreement, dated as of May 22, 2020, among Hoya Midco, LLC, as borrower, Hoya Intermediate, LLC, the lenders party thereto, and Wilmington Trust, National Association, as administrative agent and collateral agent.</u></a>

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<u>Exhibit No.</u>	<u>Description</u>
10.12	<a href="#"><u>Form of Vivid Seats Inc. 2021 Incentive Award Plan (attached to the proxy statement/prospectus/consent solicitation statement which forms part of this registration statement as Annex G).</u></a>
10.13	<a href="#"><u>Form of Vivid Seats Inc. 2021 Employee Stock Purchase Plan (attached to the proxy statement/prospectus/consent solicitation statement which forms part of this registration statement as Annex H).</u></a>
10.14*	Amended and Restated Employment Agreement, by and between Stanley Chia and Vivid Seats Inc.
10.15*	Amended and Restated Employment Agreement, by and between Lawrence Fey and Vivid Seats Inc.
10.16*	Employment and Restrictive Covenants Agreement, dated April 1, 2020, by and between Lawrence Fey and Vivid Seats LLC.
10.17*	Offer Letter, dated December 4, 2018, by and between Jon Wagner and Vivid Seats, LLC.
10.18*	Employment and Restrictive Covenants Agreement, dated December 12, 2018, by and between Jon Wagner and Vivid Seats LLC.
10.19	<a href="#"><u>Letter Agreement, dated August 20, 2020, by and between Horizon Acquisition Corporation, its officers and directors and Horizon Sponsor, LLC (incorporated by reference to Exhibit 10.4 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
10.20	<a href="#"><u>Investment Management Trust Agreement, dated August 25, 2020, between Continental Stock Transfer &amp; Trust Company and Horizon Acquisition Corporation (incorporated by reference to Exhibit 10.2 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
10.21	<a href="#"><u>Registration and Shareholder Rights Agreement, dated August 25, 2020, between Horizon Acquisition Corporation and Horizon Sponsor, LLC (incorporated by reference to Exhibit 10.3 to CF Finance Acquisition Corp.'s Form 8-K, filed with the SEC on August 26, 2020).</u></a>
10.22	<a href="#"><u>Administrative Support Agreement, dated August 20, 2020, by and between Horizon Acquisition Corporation and Horizon Sponsor, LLC (incorporated by reference to Exhibit 10.5 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
10.23	<a href="#"><u>Private Placement Warrants Purchase Agreement, dated August 20, 2020, between Horizon Acquisition Corporation and Horizon Sponsor, LLC (incorporated by reference to Exhibit 10.1 to Horizon Acquisition Corporation's Form 8-K, filed with the SEC on August 26, 2020).</u></a>
10.24	<a href="#"><u>Form of Second Amended and Restated Limited Liability Company Agreement of Hoya Intermediate, LLC (attached to the proxy statement/prospectus/consent solicitation statement which forms part of this registration statement as Annex J).</u></a>
10.25†	<a href="#"><u>Office Lease, dated April 30, 2014, by and between Vivid Seats, Ltd. and 111 N. Canal, LLC.</u></a>
10.26	<a href="#"><u>Form of Amended and Restated Warrant Agreement (attached to the proxy statement/prospectus/consent solicitation statement which forms part of this registration statement as Annex M).</u></a>
21.1*	List of subsidiaries of Vivid Seats Inc.
23.1	<a href="#"><u>Consent of Deloitte &amp; Touche LLP (with respect to the Hoya Intermediate, LLC financial statements).</u></a>
23.2	<a href="#"><u>Consent of Deloitte &amp; Touche LLP (with respect to the Vivid Seats Inc. financial statements)</u></a>
23.3	<a href="#"><u>Consent of WithumSmith+Brown, PC (with respect to Horizon Acquisition Corporation financial statements).</u></a>
23.4*	Consent of Latham & Watkins LLP (included as part of Exhibit 5.1).
24.1**	<a href="#"><u>Power of Attorney (included on the signature page of this registration statement).</u></a>

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Exhibit No.	Description
99.1*	Form of Preliminary Proxy Card.
99.2**	<a href="#"><u>Consent of Stanley Chia to be named as a director.</u></a>
99.3*	Form of Written Consent.
99.4*	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
99.5*	Form of Letter to Clients of Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
*	To be filed by amendment.
**	Previously filed.
†	Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

### **Item 22. Undertakings**

#### ***The undersigned registrant hereby undertakes:***

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933; (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement (notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement); and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment 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) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities, 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.

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- (5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, 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.
- (6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement 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.
- (7) That, prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the registrant undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.
- (8) That every prospectus (i) that is filed pursuant to the immediately preceding paragraph, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment has become effective, and that for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment 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.
- (9) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first-class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (10) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of, and included in, this registration statement when it became effective.
- (11) 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 Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act of 1933 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on July 6, 2021.

**Vivid Seats Inc.**  
By: /s/ Stanley Chia  
Name: Stanley Chia  
Title: Chief Executive Officer

Each person whose signature appears below constitutes and appoints each of Stanley Chia and Lawrence Fey, acting alone or together with another attorney-in-fact, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any or all further amendments (including post-effective amendments) to this registration statement (and any additional registration statement related hereto permitted by Rule 462(b) promulgated under the Securities Act of 1933 (and all further amendments, including post-effective amendments, thereto)), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on July 6, 2021.

Signature	Title
<u>/s/ Stanley Chia</u> Stanley Chia	Chief Executive Officer and Director Nominee (Principal Executive Officer)
<u>*</u> Lawrence Fey	Chief Financial Officer (Principal Financial Officer)
<u>*</u> Edward Pickus	Vice President, Accounting (Principal Accounting Officer)
<u>*</u> Mark Anderson	Director
<u>*</u> David Donnini	Director
* By: <u>/s/ Stanley Chia</u> Stanley Chia Attorney-in-fact	



FIRST LIEN CREDIT AGREEMENT

dated as of

June 30, 2017

among

HOYA INTERMEDIATE, LLC,  
as Holdings,

HOYA MIDCO, LLC,  
as Borrower,

the Lenders and Issuing Banks party hereto

and

BARCLAYS BANK PLC,  
as Administrative Agent, Collateral Agent, an Issuing Bank and Swing Line Lender

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RBC CAPITAL MARKETS,<sup>1</sup> SUNTRUST ROBINSON HUMPHREY, INC. and JEFFERIES FINANCE LLC,  
as Joint Lead Arrangers and Joint Bookrunners

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<sup>1</sup> RBC Capital Markets is a brand name for the investment banking businesses of Royal Bank of Canada and its affiliates.

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FIRST LIEN CREDIT AGREEMENT dated as of June 30, 2017 (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) among Hoya Intermediate, LLC, a Delaware limited liability company (“Holdings”), Hoya Midco, LLC, a Delaware limited liability company (the “Borrower”), the Lenders and Issuing Banks party hereto and Barclays Bank PLC, in its capacity as Administrative Agent, Collateral Agent, an Issuing Bank and Swing Line Lender.

Preliminary Statements:

WHEREAS, pursuant to that certain Stock Purchase and Merger Agreement, dated as of May 13, 2017 and Amended and Restated on June 30, 2017 (as amended through the date hereof in accordance with the terms of the Commitment Letter, and together with all exhibits and schedules thereto, collectively, the “Acquisition Agreement”) by and among, *inter alios*, Hoya Topco, LLC, a Delaware limited liability company (the “Company”), GTCR-Cubs Topco Acquisition LLC, a Delaware limited liability company (“GTCR Topco”), as the purchaser, GTCR-Cubs Merger Sub LLC (“Merger Sub”), the Vista Blocker Sellers (as defined therein), Vista Equity Partners Management, LLC and the other parties from time to time party thereto, GTCR Topco, together with the Sponsor and the other Investors, will acquire (the “Acquisition”) all of the outstanding equity interests of the Company; and

WHEREAS, in connection with the Transaction (as defined below) and to provide for the working capital needs and general corporate requirements (including to finance permitted Investments, acquisitions, capital expenditures and Restricted Payments) of Holdings and its Restricted Subsidiaries, the Borrower has requested that (i) the Lenders extend credit in the form of (a) Initial Term Loans in an aggregate principal amount of \$525,000,000 on the Effective Date and (b) Revolving Loans at any time and from time to time prior to the Revolving Maturity Date in an aggregate principal amount of up to \$50,000,000 and (ii) certain other lenders extend credit in the form of Second Lien Term Loans in an aggregate principal amount of \$185,000,000 pursuant to the Second Lien Credit Agreement on the Effective Date.

WHEREAS, the proceeds of the Loans borrowed on the Effective Date and the Second Lien Term Loans borrowed on the Effective Date will be used to (w) finance a portion of the Transaction, (x) fund any upfront fees in connection with the Loans and the Second Lien Term Loans (or, to the extent any fees take the form of original issue discount, such Loans and Second Lien Term Loans will reflect such original issue discount), (y) fund the Refinancing and (z) fund any other Transaction Costs.

WHEREAS, the Borrower has requested that the Issuing Banks issue Letters of Credit to support certain obligations incurred by Holdings and its Restricted Subsidiaries.

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

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

# ARTICLE I

## DEFINITIONS

### SECTION 1.01 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“ABR” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(2).

“Acceptable Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Acceptance and Prepayment Notice” means an irrevocable written notice from a Term Lender accepting a Solicited Discounted Prepayment Offer to make a Discounted Term Loan Prepayment at the Acceptable Discount specified therein pursuant to Section 2.11(a)(iii)(D) substantially in the form of Exhibit M.

“Acceptance Date” has the meaning specified in Section 2.11(a)(iii)(D)(2).

“Accepting Lenders” has the meaning specified in Section 2.24(a).

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a “Pro Forma Entity”) for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined as if references to Holdings, the Borrower and the Restricted Subsidiaries in the definition of “Consolidated EBITDA” were references to such Pro Forma Entity and its subsidiaries that will become Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity.

“Acquired Entity or Business” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Acquisition” has the meaning specified in the preliminary statements to this Agreement.

“Acquisition Agreement” has the meaning specified in the preliminary statements to this Agreement.

“Acquisition Documents” means the Acquisition Agreement and all other material definitive agreements relating to the Acquisition, as the same may be amended, restated, modified, supplemented or waived from time to time in accordance with the terms hereof and thereof.

“Acquisition Transaction” means any acquisition (including by merger or consolidation) or similar investment by the Borrower or any Restricted Subsidiary that (x) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or (y) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition, would not provide the Borrower and the other Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such acquisition, as reasonably determined by the Borrower acting in good faith.

“Additional Lender” means any Additional Revolving Lender or any Additional Term Lender, as applicable.

“Additional Revolving Lender” means, at any time, any bank, financial institution or other institutional lender or investor (other than any natural person) that agrees to provide any portion of any (a) Incremental Revolving Commitment Increase pursuant to an Incremental Facility Amendment in accordance with Section 2.20 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Revolving Lender shall be subject to the approval of the Administrative Agent (and, if such Additional Revolving Lender will provide an Incremental Revolving Commitment Increase, each Issuing Bank and the Swing Line Lender), in each case only if such consent would be required under Section 9.04(b) for an assignment of Revolving Loans or Revolving Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval in each case not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“Additional Term Lender” means, at any time, any bank, financial institution or other institutional lender or investor (other than any natural person) that agrees to provide any portion of any (a) Incremental Term Loans pursuant to an Incremental Facility Amendment in accordance with Section 2.20 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Term Lender shall be subject to the approval of the Administrative Agent if such consent would be required under Section 9.04(b) for an assignment of Term Loans or Term Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval in each case not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; provided that (x) with respect to the Initial Term Loans only, the Adjusted LIBO Rate for any Interest Period shall not be less than 1.00% per annum and (y) with respect to the Revolving Loans only, the Adjusted LIBO Rate for any Interest Period shall not be less than 0.00% per annum.

“Administrative Agent” means Barclays Bank PLC, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders in writing.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affected Class” has the meaning specified in Section 2.24(a).

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified. For purposes of this Agreement and the other Loan Documents, Jefferies LLC and its Affiliates shall be deemed to be Affiliates of Jefferies Finance LLC and its Affiliates.

“Affiliated Debt Fund” means any Affiliated Lender that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and with respect to which the Sponsor and investment vehicles managed or advised by the Sponsor that are not engaged primarily in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course do not make investment decisions for such entity.

“Affiliated Lender” means, at any time, any Lender that is any Person (other than Holdings or any of its Subsidiaries) contemplated by the definition of Sponsor at such time.

“Agent” means any of the Administrative Agent, the Collateral Agent, each Joint Lead Arranger, any successors and assigns of the foregoing in such capacity, and “Agents” means two or more of them.

“Agent Parties” has the meaning given to such term in Section 9.01(c).

“Agreement” has the meaning given to such term in the introductory paragraph hereto.

“Agreement Currency” has the meaning assigned to such term in Section 9.17.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1.00% and (c) the Adjusted LIBO Rate for the applicable Loan on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in Dollars with a maturity of one (1) month plus 1.00%; provided that, solely for purposes of the foregoing, the Adjusted LIBO Rate for any day shall be calculated using the LIBO Rate on such day at approximately 11:00 a.m. (New York City time) for a deposit in Dollars with a maturity of one (1) month. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) or

(c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternative Currency” means currencies as may be approved by the Administrative Agent, the Issuing Banks and the applicable Revolving Lenders and/or Issuing Banks that agree to provide Revolving Loans and/or Letters of Credit in such other currencies from time to time.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency, as determined by the Administrative Agent at such time on the basis of the Exchange Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Loan” means a Loan denominated in an Alternative Currency.

“Applicable Account” means, with respect to any payment to be made to the Administrative Agent hereunder, the account specified by the Administrative Agent from time to time for the purpose of receiving payments of such type.

“Applicable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Applicable Fronting Exposure” means, with respect to any Person that is an Issuing Bank at any time, the sum of (a) the aggregate amount of all Letters of Credit issued by such Person in its capacity as an Issuing Bank (if applicable) that remains available for drawing at such time and (b) the aggregate amount of all LC Disbursements made by such Person in its capacity as an Issuing Bank (if applicable) that have not yet been reimbursed by or on behalf of the Borrower at such time.

“Applicable Percentage” means, at any time with respect to any Revolving Lender, the percentage of the aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time (or, if the Revolving Commitments have terminated or expired, such Lender’s share of the total Revolving Exposure at that time); provided that, at any time any Revolving Lender shall be a Defaulting Lender, “Applicable Percentage” shall mean the percentage of the aggregate Revolving Commitments (disregarding any such Defaulting Lender’s Revolving Commitment) represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments pursuant to this Agreement and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Period” has the meaning assigned to such term in the definition of “Applicable Rate”.

“Applicable Rate” means, for any day, (x) with respect to any Initial Term Loan, (i) 3.00% per annum, in the case of an ABR Loan, or (ii) 4.00% per annum, in the case of a Eurodollar Loan and (y) with respect to any Revolving Loan, (i) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Effective Date, (A) 3.00% per annum, in the case of an ABR Loan, or (B) 4.00% per annum, in the case of a Eurodollar Loan, and (ii) thereafter, the applicable percentage per annum set forth below, as determined by reference to the Senior Secured First Lien Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

	<u>Pricing Level</u>	<u>Applicable Rate</u>	<u>Senior Secured First Lien Net Leverage Ratio</u>	<u>Eurodollar Loans</u>	<u>ABR Loans</u>
1			> 4.50:1.00	4.00%	3.00%
2			£4.50:1.00 and > 4.00:1.00	3.75%	2.75%
3			£ 4.00:1.00	3.50%	2.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Senior Secured 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 5.01(d); provided that if such Compliance Certificate is not delivered in accordance with Section 5.01(d), the Applicable Rate with respect to Revolving Loans shall be set at the margin in the row styled “Pricing Level 1” as of the first day of the month following the end of the quarter for which the Compliance Certificate was not delivered until the date on which such Compliance Certificate is delivered (on which date, the Applicable Rate with respect to Revolving Loans shall be set at the margin based upon the calculations disclosed by such certification).

In the event that the Compliance Certificate setting forth the Senior Secured First Lien Net Leverage Ratio previously delivered pursuant to Section 5.01(d) was inaccurate (and such inaccuracy is discovered while any Revolving Commitments are outstanding), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Rate for the Revolving Loans for any period (an “Applicable Period”) than the Applicable Rate for Revolving Loans applied for such Applicable Period, then, to the extent any Revolving Commitments are outstanding at such time, (i) the Borrower shall as soon as practicable deliver to the Administrative Agent the correct certified calculation of the Senior Secured First Lien Net Leverage Ratio for such Applicable Period, (ii) the Applicable Rate for Revolving Loans for such Applicable Period shall be determined as if the level for such higher Applicable Rate for Revolving Loans was applicable for such Applicable Period, and (iii) the Borrower shall within ten Business Days of written demand thereof by the Administrative Agent pay to the Administrative Agent the accrued additional interest with respect to Revolving Loans owing as a result of such increased Applicable Rate for the Revolving Loans for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement.

“Appropriate Lender” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant Issuing Banks and (ii) the Revolving Lenders and (c) with respect to the Swing Line Facility, (i) the relevant Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

“Approved Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments”.

“Approved Foreign Bank” has the meaning assigned to such term in the definition of “Permitted Investments”.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04(b)), substantially in the form of Exhibit A or any other form reasonably approved by the Administrative Agent.

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor employed 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 2.11(a)(iii)(A); 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 Amount” means, as of any date of determination (the “Reference Date”), a cumulative amount equal to (without duplication):

(a) the greater of \$30,000,000 and 30% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (the “Starter Basket”), plus

(b) an amount equal to (x) the cumulative amount of Excess Cash Flow (which amount shall not be less than zero in any fiscal year and shall not be reduced by any negative Excess Cash Flow) of Holdings and its Restricted Subsidiaries for any fiscal year prior to the Reference Date minus (y) the portion of Excess Cash Flow that has been (or is required to be) applied prior to the Reference Date to the prepayment of Term Loans in accordance with Section 2.11(d), plus

(c) to the extent not included in Consolidated Net Income, returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings and its Restricted Subsidiaries on Investments made using the Available Amount and cash received from the sale of Investments made using the Available Amount or pursuant to

Section 6.04(g) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiaries to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus

(d) Investments of Holdings, the Borrower or any of the Restricted Subsidiaries in any Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount that has been re-designated as a Restricted Subsidiary or that has been merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary, or the assets of which has been transferred to a Loan Party or any of its Restricted Subsidiaries (up to the fair market value determined in good faith by the Borrower of the Investments of Holdings, the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation), plus

(e) to the extent not included in Consolidated Net Income, the Net Proceeds of a sale or other Disposition of any Investment in an Unrestricted Subsidiary (including the issuance of stock of an Unrestricted Subsidiary), non-Subsidiary joint venture or minority investment made using the Available Amount received by Holdings, the Borrower or any Restricted Subsidiary (or the fair market value of the assets thereof that have been transferred to Holdings, the Borrower or any Restricted Subsidiary), plus

(f) to the extent not included in Consolidated Net Income, dividends, profits, or other distributions, returns on capital or similar amounts received by Holdings, the Borrower or any Restricted Subsidiary from an Investment in an Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount (or from the sale of the assets thereof) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiary to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus

(g) to the extent not included in Consolidated Net Income, the aggregate proceeds and the fair market value (as reasonably determined by the Borrower) of marketable securities or other property received by Holdings, the Borrower or a Restricted Subsidiary since the Effective Date from any Person other than the Borrower or a Restricted Subsidiary (excluding any amount applied as an Available Equity Amount), plus

(h) the aggregate amount of any Retained Declined Proceeds since the Effective Date, to the extent not applied to prepay any pari passu Indebtedness, the Second Lien Term Loans or any other Junior Financing, as contemplated by Section 2.11(e) and Section 6.07(b).

“Available Equity Amount” means a cumulative amount equal to (without duplication):

(a) the Net Proceeds of new public or private issuances of Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as



Cure Amounts and any Qualified Equity Interests issued pursuant to Section 6.04(o)) in Holdings or any parent of Holdings which are contributed to Holdings or the Borrower, plus

(b) capital contributions (excluding capital contributions the proceeds of which will be applied as Cure Amounts) received by Holdings or the Borrower after the Effective Date in cash or Permitted Investments (other than in respect of any Disqualified Equity Interest), plus

(c) the net cash proceeds received by Holdings, the Borrower or any Restricted Subsidiary from Indebtedness and Disqualified Equity Interest issuances issued after the Effective Date and which have been exchanged or converted into Qualified Equity Interests, plus

(d) returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings, the Borrower or any Restricted Subsidiary on Investments made using the Available Equity Amount,

in each case, to the extent such amount is Not Otherwise Applied pursuant to the Available Amount.

“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” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended, or any similar federal or state law for the relief of debtors.

“Basel III” means: (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011 as amended, supplemented or restated; and (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers,

board of directors, manager or managing member of such Person or the functional equivalent of the foregoing or any committee thereof duly authorized to act on behalf of such board, manager or managing member; (c) in the case of any partnership, the board of directors or board of managers of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

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

“Borrower” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 5.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by the Borrower to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.11(a)(iii)(B).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by the Borrower of offers for, and the corresponding acceptance by a Term Lender of, a voluntary prepayment of Term Loans at a specified range at a discount to par pursuant to Section 2.11(a)(iii)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by the Borrower of offers for, and the subsequent acceptance, if any, by a Term Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.11(a)(iii)(D).

“Borrowing” means (i) Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (ii) a Swing Line Borrowing, as the context may require.

“Borrowing Minimum” means (i) in the case of Term Loans, \$5,000,000, (ii) in the case of a Eurodollar Revolving Borrowing, the lesser of \$500,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and the remaining Commitments of the applicable Class and (iii) in the case of an ABR Revolving Borrowing, the lesser of \$250,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and the remaining Commitments of the applicable Class.

“Borrowing Multiple” means (i) in the case of Term Loans, \$1,000,000, (ii) in the case of a Eurodollar Revolving Borrowing, \$500,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and (iii) in the case of an ABR Revolving Borrowing, \$250,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof).

“Borrowing Request” means (i) a request by the Borrower for a Borrowing in accordance with Section 2.03, (ii) with respect to Letters of Credit, a Letter of Credit Request and (iii) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Requirements of Law to remain closed; provided, that (x) if such day relates to any Eurodollar Loan, means any such day that is also a London Banking Day and (y) if such day relates to any interest rate settings as to a Eurodollar Loan denominated in an Alternative Currency, any fundings, disbursements, settlements or payments in such Alternative Currency, or any other dealings in such Alternative Currency to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capitalized Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP; provided, further, that all obligations of any Person that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect and as applied on the Effective Date (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease) for purposes of this Agreement regardless of any change in GAAP which becomes effective after the Effective Date that would otherwise require such obligation to be recharacterized as a Capitalized Lease.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by Holdings and its Restricted Subsidiaries during such period in respect of 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 Holdings and its Restricted Subsidiaries.

“Cash Management Obligations” means (a) obligations of Holdings, the Borrower or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Cash Management Services” has the meaning assigned to such term in the definition of “Secured Cash Management Obligations”.

“Casualty Event” means any event that gives rise to the receipt by Holdings, the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in an

amount in excess of \$20,000,000 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.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Control” means (a) the failure of Holdings prior to an IPO, or, after the IPO, the IPO Entity, directly or indirectly through wholly owned subsidiaries, to own all of the Equity Interests of the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of members of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy, ownership of Equity Interests or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 35% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one or more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the Second Lien Credit Agreement, the documentation governing any Incremental Equivalent Debt, Junior Financing or other Material Indebtedness.

For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered.

“Change in Law” means: (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations,

guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by the United States, Canada, the European Union, United Kingdom or other foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a "Change in Law", to the extent enacted, adopted, promulgated, implemented or issued after the date of this Agreement, but only to the extent such rules, regulations, or published interpretations or directives are applied to Holdings and its Subsidiaries by the Administrative Agent or any Lender in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities, including, without limitation, for purposes of Section 2.15.

"Class" when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Other Revolving Loans, Term Loans, Incremental Term Loans or Other Term Loans, (b) any Commitment, refers to whether such Commitment is a Revolving Commitment, Other Revolving Commitment, Term Commitment or Other Term Commitment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Commitments, Other Term Loans, Other Revolving Commitments (and the Other Revolving Loans made pursuant thereto), Incremental Term Loans that have different terms and conditions shall be construed to be in different Classes.

"Closing Date Intercreditor Agreement" means the Closing Date Intercreditor Agreement dated as of the Effective Date, substantially in the form of Exhibit E-2, between the Administrative Agent, the Second Lien Administrative Agent (and each other Senior Representative for holders of Indebtedness permitted by this Agreement to be secured by the Collateral, that becomes party thereto after the Effective Date), Holdings, the Borrower and the Subsidiary Loan Parties party thereto from time to time.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Security Documents as security for the Secured Obligations.

"Collateral Agent" has the meaning given to such term in Section 8.01(b) and its successors in such capacity as provided in Article VIII.

"Collateral Agreement" means the Collateral Agreement among the Loan Parties party thereto and the Collateral Agent, substantially in the form of Exhibit D.

"Collateral and Guarantee Requirement" means, at any time, the requirement that:

(a) the Administrative Agent shall have received from (i) Holdings, the Borrower and each of the Restricted Subsidiaries (other than any Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee

Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Person and (ii) Holdings, the Borrower and each Subsidiary Loan Party either (x) a counterpart of each applicable Security Document duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Subsidiary Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), either (A) to the extent applicable, a supplement to each applicable Security Document, substantially the form specified therein, duly executed and delivered on behalf of such Person or (B) a Security Document, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, to the extent reasonably requested by the Administrative Agent, documents of the type referred to in Section 4.01(d) within the time periods set forth in Sections 5.11 and 5.12;

(b) all outstanding Equity Interests of the Borrower and each Restricted Subsidiary (other than any Equity Interests constituting Excluded Assets) owned by or on behalf of any Loan Party, shall have been pledged, charged or otherwise made subject to security pursuant to the applicable Security Document, and the Administrative Agent shall have received certificates, if any, representing all such Equity Interests to the extent constituting “certificated securities”, together with all certificates, documents of title and other documentary evidence of ownership and undated stock powers or other instruments of transfer with respect thereto endorsed in blank, in each case, to the extent required to perfect the security interest therein in the jurisdiction of the issuer;

(c) if any Indebtedness for borrowed money of Holdings, the Borrower or any Subsidiary in a principal amount of \$20,000,000 or more is owing by such obligor to any Loan Party and such Indebtedness shall be evidenced by a promissory note, such promissory note shall be pledged or otherwise secured pursuant to the applicable Security Document, and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank; provided, however, that the foregoing delivery requirement with respect to any intercompany indebtedness may be satisfied by delivery of an omnibus or global intercompany note executed by all Loan Parties as payees and all such obligors as payors;

(d) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and Intellectual Property Security Agreements with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral, for the filing with the United States Patent and Trademark Office and the United States Copyright Office to the extent required by this Agreement, the Security Documents, Requirements of Law and as reasonably requested by the Administrative Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, this Agreement, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement”, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record

owner of such Mortgaged Property (provided that, (A) if a mortgage tax will be owed on the entire amount of the Secured Obligations evidenced hereby, then, to the extent permitted by, and in accordance with, applicable law, the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Secured Obligations allocated to the applicable Mortgaged Property and (y) the estimated fair market value of the Mortgaged Property at the time the Mortgage is entered into, as reasonably determined by the Borrower, which in the case of clause (y) will result in a limitation of the Secured Obligations secured by the Mortgage to such amount) and (B) the Mortgage shall not secure the Loan Document Obligations in respect of Letters of Credit or the Revolving Loan in those states that impose a mortgage tax on paydowns or re-advances applicable thereto), (ii) a policy or policies of title insurance (or marked unconditional commitment to issue such policy or policies) issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor's rights endorsement) as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates (it being agreed that the Administrative Agent shall accept zoning reports from a nationally recognized zoning company in lieu of zoning endorsements to such title insurance policies), in an amount equal to the fair market value of such Mortgaged Property or as otherwise reasonably agreed by the parties; provided that in no event will the Borrower be required to obtain independent appraisals of such Mortgaged Properties, unless required by FIRREA, (iii) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and if any Mortgaged Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in special flood hazard area, a duly executed notice about special flood hazard area status and flood disaster assistance and evidence of such flood insurance as provided in Section 5.07(b), (iv) in each case if reasonably requested by the Administrative Agent, a customary legal opinion with respect to each such Mortgage, from counsel qualified to opine in each jurisdiction (a) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (b) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized or incorporated, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other customary matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (v) a (a) survey in compliance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys or such other requirements as in effect at the time and otherwise reasonably satisfactory to the Administrative Agent or (b) existing survey, Express Map or other similar documentation that is available together with a no change affidavit of such Mortgaged Property and for which survey coverage is available for the policies of title insurance referenced in clause (ii) above without the need for such new or updated surveys, and (vi) evidence of payment of title insurance premiums and expenses and all recording, mortgage, transfer and stamp taxes and fees payable in connection with recording the Mortgage, any amendments thereto and any fixture filings in appropriate county land office(s). Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until, (a) if such Mortgage relates to a property not located in

a flood zone, at least five (5) Business Days in advance of such execution and delivery or (b) if such Mortgage relates to a property located in a flood zone, at least fourteen (14) days in advance of such execution and delivery, each Lender has received the documents described in clause (e) (iii) above and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Administrative Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as the Administrative Agent and the Borrower reasonably agree in writing that the cost or burden of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences (that are not de minimis) to Holdings and its Affiliates (including the imposition of withholding or other material taxes)), is excessive in relation to the benefits to be obtained by the Lenders therefrom; (b) Liens required to be granted from time to time pursuant to the term "Collateral and Guarantee Requirement" shall be subject to exceptions and limitations set forth in this Agreement and the Security Documents; (c) in no event shall (i) control agreements or other control or similar arrangements be required with respect to cash, Permitted Investments, other deposit accounts, securities and commodities accounts (including securities entitlements and related assets), letter of credit rights or other assets requiring perfection by control (but not, for avoidance of doubt, possession) or (ii) landlord lien waivers, bailee waivers, warehouseman letters, estoppels, or collateral access letters be required; (d) in no event shall any Loan Party be required to complete any filings or other action with respect to the perfection of security interests in any jurisdiction outside of the United States (or any state, commonwealth or territory thereof or the District of Columbia), or to perfect or make enforceable any security interests in any such assets (it being understood that all security granted by a Loan Party (other than Mortgages) shall be governed by the law of the state of New York; (e) in no event shall any Loan Party be required to complete any filings or other action with respect to perfection of security interests in assets subject to certificates of title beyond the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party); (f) other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party), no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$20,000,000; (g) in no event shall any Loan Party be required to complete any filings or other action (including entering into any source code escrow arrangements or seeking registration of any Copyrights) with respect to security interests in Intellectual Property beyond the filing of Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office; (h) no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party)); (i) in no event shall environmental reports be required to be delivered to the Administrative Agent or the Lenders and (j) in no event shall the Collateral include any Excluded Assets. The Administrative Agent may grant extensions of time for the creation and perfection of security



interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date) and any other obligations under this definition where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement (including as set forth on Schedule 5.14) or the Security Documents.

“Commitment” means with respect to any Lender, its Revolving Commitment, Other Revolving Commitment of any Class, Term Commitment, Commitments under any Incremental Term Facility of any Class, Other Term Commitment of any Class or any combination thereof (as the context requires).

“Commitment Fee Percentage” means, for any day (i) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Effective Date, 0.50% per annum and (ii) thereafter, the applicable percentage set forth below under the caption “Commitment Fee Percentage”, as determined by reference to the Senior Secured First Lien Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

<u>Senior Secured First Lien Net Leverage Ratio</u>	<u>Commitment Fee Percentage</u>
<u>Category 1</u>	0.50%
Greater than 4.50 to 1.00	
<u>Category 2</u>	0.375%
Less than or equal to 4.50 to 1.00 but greater than to 4.00 to 1.00	
<u>Category 3</u>	0.25%
Less than or equal to 4.00 to 1.00	

Any increase or decrease in the Commitment Fee Percentage resulting from a change in the Senior Secured 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 5.01(d); provided that if such Compliance Certificate is not delivered in accordance with Section 5.01(d), the Commitment Fee Percentage shall be set at the margin in the row styled “Category 1” as of the first day of the month following the end of the quarter for which the Compliance Certificate was not delivered until the date on which such Compliance Certificate is delivered (on which date, the Commitment Fee Percentage shall be set at the margin based upon the calculations disclosed by such certification). Notwithstanding the foregoing, the Commitment

Fee Percentage, at the option of the Administrative Agent or the Required Revolving Lenders, commencing upon written notice to the Borrower, shall be based on the rates per annum set forth in Category 1 (i) at any time that an Event of Default under Section 7.01(a) has occurred and is continuing and shall continue to so apply to but excluding the date on which such Event of Default shall cease to be continuing (and thereafter, the Category otherwise determined in accordance with this definition shall apply) or (ii) if the Borrower fails to deliver the consolidated financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b) or any Compliance Certificate required to be delivered pursuant hereto, in each case within the time periods specified herein for such delivery, during the period commencing on and including the day of the occurrence of a Default resulting from such failure and until the delivery thereof.

In the event that the Compliance Certificate setting forth the Senior Secured First Lien Net Leverage Ratio previously delivered pursuant to Section 5.01(d) was inaccurate (and such inaccuracy is discovered while any Revolving Commitments are outstanding), and such inaccuracy, if corrected, would have led to the application of a higher Commitment Fee Percentage for any Applicable Period than the Commitment Fee Percentage applied for such Applicable Period, then, to the extent any Revolving Commitments are outstanding at such time, (i) the Borrower shall as soon as practicable deliver to the Administrative Agent the correct certified calculation of the Senior Secured First Lien Net Leverage Ratio for such Applicable Period, (ii) the Commitment Fee Percentage for such Applicable Period shall be determined as if the Category for such higher Commitment Fee Percentage was applicable for such Applicable Period, and (iii) the Borrower shall within ten (10) Business Days of written demand thereof by the Administrative Agent pay to the Administrative Agent the accrued additional commitment fees with respect to Revolving Loans owing as a result of such increased Commitment Fee Percentage for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement.

“Commitment Letter” means that certain Commitment Letter, dated as of May 13, 2017 (and as supplemented by that certain Joinder to Commitment Letter, dated as of June 7, 2017), between, by and among the Joint Lead Arrangers and GTCR Topco.

“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.

“Company” has the meaning specified in the preliminary statements in this Agreement.

“Company Material Adverse Effect” means “Material Adverse Effect” as defined in the Acquisition Agreement.

“Compliance Certificate” means the certificate required to be delivered pursuant to Section 5.01(d), substantially in the form of Exhibit R.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back), other than with respect to clause (xx), in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, the sum of (A) premium payments, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) permitted to be incurred hereunder plus (B) the portion of rent expense with respect to such period under Capitalized Leases that is treated as interest expense in accordance with GAAP plus (C) the implied interest component of synthetic leases with respect to such period plus (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk in respect of Indebtedness, net of interest income and gains on such hedging obligations or such derivative instruments plus (E) bank and letter of credit fees and banker's acceptance fees and costs of surety bonds in connection with financing activities, plus (F) any commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility;

(ii) provision for taxes based on income, profits or capital and sales and gross sales taxes, including federal, foreign, state, franchise, excise, and similar taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations;

(iii) Non-Cash Charges as elected by the Borrower;

(iv) [reserved];

(v) extraordinary charges, expenses or losses in accordance with GAAP;

(vi) unusual or non-recurring charges, expenses or losses (including any unusual or non-recurring operating expenses directly attributable to the implementation of cost savings initiatives), integration costs, severance, relocation costs, office and facilities' opening costs and other business optimization expenses (including related to new product introductions and new system design and implementation costs), recruiting costs and fees, signing fees, expenses, costs and bonuses, retention or completion bonuses, contract termination costs, transaction fees and expenses, transition costs, systems establishment costs, costs related to closure/consolidation of office and facilities, costs related to the implementation of operational and reporting systems and technology initiatives, consulting fees and expenses, any one time expense relating to enhanced accounting function or other transaction costs (including those associated with becoming a standalone entity or a public company), and non-recurring Intellectual Property development, curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities) or any other costs incurred in connection with any of the foregoing;

(vii) restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to the Transaction and other acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements;

(viii) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary deducted (and not added back in such period) in calculating Consolidated Net Income;

(ix) (A) management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses permitted to be paid under this Agreement and related indemnities paid or accrued to equity holders of Holdings (and their Affiliates) and director fees and expenses and (B) the amount of expenses relating to payments made to option holders of Holdings in connection with, or as a result of, any distribution being made to shareholders of such Person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted by the Loan Documents;

(x) losses on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(xi) any non-cash loss attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such loss has not been realized);

(xii) any loss relating to amounts paid in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income for such period;

(xiii) any gain relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (d)(iv) and (d)(v) below;

(xiv) any costs or expenses incurred by Holdings, the Borrower or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds

contributed to the capital of Holdings or Net Proceeds of an issuance of Equity Interests of Holdings (other than Disqualified Equity Interests), or repurchase of Equity Interests of Holdings from employees, directors or consultants;

(xv) any net pension or other post-employment benefit costs 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 715, and any other items of a similar nature;

(xvi) any other add-backs and adjustments previously identified and agreed to by the Joint Lead Arrangers, including all such add-backs and adjustments set forth in the Sponsor Model or the Information Memorandum;

(xvii) the amount of losses on Dispositions of accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xviii) any increase in expenses resulting from the revaluation of inventory (including any impact of changes of inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments;

(xix) charges, losses or expenses to the extent indemnified or insured or reimbursable, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days) by a third party;

(xx) solely for purposes of determining compliance with the Financial Performance Covenant in respect of any period which includes the exercise of a Cure Right (but not for the determination of the Senior Secured First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Total Net Leverage Ratio for any other purposes), any Cure Amount (subject in all respects to the terms of Section 7.02); and

(xxi) to the extent that any Holdings Parent Specified Expenses would have been added back to Consolidated EBITDA pursuant to clauses (a)(i) through (xx) above had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses.

plus

(b) without duplication, the amount of “run rate” cost savings, operating expense reductions, other operating improvements and “run rate” synergies related to the Transaction, any Specified Transaction, any restructuring, cost saving initiative or other

initiative projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken, in each case on or prior to the date that is eighteen (18) months after the end of the relevant Test Period (which shall be deemed to be the Effective Date for any actions initiated prior to the Effective Date) (which cost savings, operating expense reductions, other operating improvements and synergies shall be added to Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; provided that (A) a Financial Officer of the Borrower shall certify in a Compliance Certificate that in its good faith judgment such cost savings are reasonably identifiable, reasonably anticipated to be realized, and factually supportable and (B) no cost savings, operating expense reductions, other operating improvements or synergies shall be added pursuant to this clause (b) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions or synergies that are included in clauses (a) (vi) and (a)(vii) above or in the definition of "Pro Forma Adjustment" (it being understood and agreed that "run rate" shall mean the full recurring benefit that is associated with any action taken); provided, further, that any amounts added back pursuant to this clause (b) (together with any anticipated "run rate" synergies added to the calculation of Consolidated EBITDA pursuant to the definition of "Pro Forma Adjustment"), shall not exceed, in the aggregate for such period, 25% of Consolidated EBITDA (as determined after giving effect to all such amounts added pursuant to this clause (b) and the definition of "Pro Forma Adjustment"); provided, further that, for the avoidance of doubt, the amount of any such (x) items resulting from, or in connection with, the Transactions and (y) items that would be permitted to be included pursuant to clause (xvi), in each case, shall not be subject to or included in the calculation of such 25% limitation.

plus

(c) to the extent covered by business interruption insurance and actually reimbursed or otherwise paid in cash, expenses or losses relating to business interruption or, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

less

(d) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) unusual or non-recurring gains;

(ii) non-cash gains (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);

(iii) gains on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(iv) any non-cash gain attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such gain has not been realized);

(v) any gain relating to amounts received in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income in such period;

(vi) the amount of any minority interest income consisting of losses attributable to minority interests or non-controlling interests in any non-wholly owned Restricted Subsidiary;

(vii) [reserved];

(viii) any loss relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (a)(xi) and (a)(xii) above;

in each case, as determined on a consolidated basis for Holdings and the Restricted Subsidiaries in accordance with GAAP; provided that:

(I) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of Financial Accounting Standards Codification No. 815—Derivatives and Hedging,

(II) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) to the extent not included in Consolidated Net Income, the Acquired EBITDA of any Person, business, line of business, division, business unit or asset acquired by Holdings, the Borrower or any Restricted Subsidiary during such period (other than any Unrestricted Subsidiary) to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business, line of business, division, business unit or assets to the extent not so acquired) (each such Person, property, business, line of business, division, business unit or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), in each case based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis and (B) an adjustment equal to the

amount of the Pro Forma Adjustment for such period (including the portion thereof occurring prior to such acquisition or conversion), subject to the limitations set forth in clause (b) above;

(III) there shall be (A) to the extent included in Consolidated Net Income, excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business, line of business, division, business unit or asset (other than any Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations in accordance with GAAP (other than (x) if so classified on the basis that it is being held for sale unless such sale has actually occurred during such period and (y) for periods prior to the applicable sale, transfer or other disposition, if the Disposed EBITDA of such Person, property, business, line of business, division, business unit or asset is positive (i.e., if such Disposed EBITDA is negative, it shall be added back in determining Consolidated EBITDA for any period)) by Holdings, the Borrower or any Restricted Subsidiary during such period (each such Person, property, business, line of business, division, business unit or asset so sold, transferred or otherwise disposed of, closed or classified, a “Sold Entity or Business”), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), in each case based on the Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis and (B) to the extent not included in Consolidated Net Income, included in determining Consolidated EBITDA for any period in which a Sold Entity or Business is disposed, an adjustment equal to the Pro Forma Disposal Adjustment with respect to such Sold Entity or Business (including the portion thereof occurring prior to such disposal); and

(IV) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA any expense (or income) as a result of adjustments recorded to contingent consideration liabilities relating to the Transaction or any Permitted Acquisition (or other Investment permitted hereunder).

For the purposes of determining the Senior Secured First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Total Net Leverage Ratio for any relevant Test Period, Consolidated EBITDA shall be deemed to equal (a) \$23,863,425 for the fiscal quarter ended June 30, 2016, (b) \$24,935,436 for the fiscal quarter ended September 30, 2016, (c) \$28,738,786 for the fiscal quarter ended December 31, 2016 and (d) \$28,043,817 for the fiscal quarter ended March 31, 2017 (it being understood that such amounts are subject to adjustments, as and to the extent otherwise contemplated in this Agreement, in connection with any Pro Forma Adjustment, Pro Forma Disposal Adjustment or any calculation on a Pro Forma Basis).

“Consolidated Net Income” means, for any period, the net income (loss) of Holdings and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication;

(a) extraordinary items for such period in accordance with GAAP;



(b) the cumulative effect of a change in accounting principles during such period;

(c) any accruals, payments, fees, costs and expenses (including rationalization, legal, tax, structuring, financial advisory, investment banking, any transaction or retention bonus or similar payment and fees, costs and expenses of any counsel, consultants or other advisors and other costs and expenses) incurred during such period, or any amortization thereof for such period, in connection with the Transactions (including Transaction Costs), any Specified Transactions, any non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investments (including any earn-outs), Restricted Payments, Dispositions, recapitalization, issuances of Indebtedness or Equity Interests (including any initial public offering) or repayment of debt, refinancing transactions or amendment or other modification of any debt instrument, and restructurings, workouts and extensions and refinancings of any of the foregoing, non-competition agreements, one-time accruals, up-front fees, financing fees, commitment fees, costs, expenses or premiums related to any repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of or waiver or consent relating to any debt instrument (in each case, including the Transaction Costs and any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed and including costs and expenses of the Administrative Agent and Lenders that are reimbursed and fees paid to the Permitted Holders) and any charges or non-recurring merger or amalgamation costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460); provided that any such accruals, payments and expenses related to unconsummated transactions shall not, together with any accruals, payments and expenses related to unconsummated transactions added back pursuant to clause (a)(vi) of the definition of “Consolidated EBITDA”, exceed \$5,000,000 in the aggregate in any four-quarter fiscal period;

(d) any income (loss) for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments;

(e) accruals and reserves that are established or adjusted as a result of the Transactions or any Permitted Acquisition or other Investment not prohibited under this Agreement in accordance with GAAP (including any adjustment of estimated payouts on earn-outs) or changes as a result of the adoption or modification of accounting policies during such period;

(f) any income (loss) attributable to deferred compensation plans or trusts;

(g) stock-based award compensation expenses;

(h) the amount of any expense required to be recorded as compensation expense related to contingent transaction consideration;

(i) currency translation gains and losses related to currency remeasurements of assets, liabilities or indebtedness (including the net loss or gain resulting from hedging agreements for currency exchange risk and revaluations of intercompany balances);

(j) to the extent that any Holdings Parent Specified Expenses would have been included in Consolidated Net Income had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses; and

(k) the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to Holdings and its Restricted Subsidiaries), as a result of the Transactions, any acquisition or Investment consummated prior to the Effective Date and any Permitted Acquisitions (or other Investment not prohibited hereunder) or the amortization or write-off of any amounts thereof.

There shall be included in Consolidated Net Income, without duplication, any dividends or other distributions received in cash or other Permitted Investments from Unrestricted Subsidiaries.

“Consolidated Senior Secured First Lien Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured First Lien Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured First Lien Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Senior Secured Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Total Net Indebtedness” means, as of any date of determination, the aggregate amount of Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Working Capital” means, at any date, the excess (which may be negative) of (a) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries at such date, excluding the current portion of deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries on such date, but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans, Second Lien Term Loans and obligations under Letters of Credit and Capital Lease Obligations to the extent otherwise included therein, (iii) the current portion of interest, (iv) the current portion of current and deferred income taxes, (v) accrual of any costs or expenses related to restructuring reserves, (vi) the current portion of pension liabilities and (vii) deferred revenue; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in working capital (A) arising from acquisitions or dispositions by Holdings and its Restricted Subsidiaries shall be measured from the date on which such acquisition or disposition occurred until the first anniversary of such acquisition or disposition with respect to the Person subject to such acquisition or disposition and (B) shall exclude (I) the impact of non-cash adjustments contemplated in the Excess Cash Flow calculation, (II) the impact of adjusting items in the definition of Consolidated Net Income and (III) any changes in current assets or current liabilities as a result of (x) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under hedging agreements or other derivative obligations or (y) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent.

“Contract Consideration” has the meaning assigned to such term in the definition of “Excess Cash Flow”.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Converted Restricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Converted Unrestricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Copyrights” has the meaning assigned to such term in the Collateral Agreement.

“Credit Agreement Refinancing Indebtedness” means Indebtedness issued, incurred or otherwise obtained by the Borrower or another Loan Party (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Term Loans, Revolving Loans (or unused Revolving Commitments), (“Refinanced Debt”); provided that such exchanging, extending, renewing, replacing or refinancing Indebtedness (a) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (plus any premium, original issue discount and upfront fees, accrued interest and fees and expenses incurred in connection with such exchange, extension, renewal, repayment, replacement or refinancing and the incurrence of such new Credit Agreement Refinancing Indebtedness) plus additional amounts to the extent otherwise permitted to be incurred under this Agreement pursuant to Section 6.01 (which additional amounts, for the avoidance of doubt, (x) do not constitute Credit Agreement Refinancing Indebtedness and (y) shall constitute a utilization of the relevant basket or exception pursuant to which such additional amount is permitted to be incurred), (b) (i) (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) does not mature earlier than or, except in the case of Revolving Commitments, have a Weighted Average Life to Maturity shorter than the Refinanced Debt and (ii) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Secured Obligations, does not have scheduled amortization or required payments of principal prior to the maturity date of the Refinanced Debt (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) (except for customary payments in respect of asset sales, insurance and condemnation proceeds events, change of control or similar events and “AHYDO catch-up payments” and offers to purchase upon an event of default), (c) shall not be guaranteed by any entity that is not, or that does not substantially concurrently become, a Loan Party, (d) in the case of any secured Indebtedness, is (i) not secured by any assets not securing the Secured Obligations and (ii) subject to the relevant Intercreditor Agreement(s), (e) if the Refinanced Debt was (1) contractually subordinated to the Loan Document Obligations in right of payment, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt or otherwise reasonably satisfactory to the Administrative Agent and (2) contractually subordinated to the Loan Document Obligations in right of security, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the indebtedness refinanced or otherwise reasonably satisfactory to the Administrative Agent or be unsecured, (f) solely in the case such Credit Agreement Refinancing Indebtedness is *pari passu* in right of payment and security with the Initial Term Loans, such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis (or on less than a pro rata basis if the Borrower

and the Lenders thereunder elect lesser payments) (but not greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, (g) in the case of any Credit Agreement Refinancing Indebtedness that is a revolving credit facility, may provide for the ability to participate (x) with respect to borrowings and repayments on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) with other then-outstanding Classes of Revolving Commitments and (y) with respect to permanent repayments and terminations of revolving commitments, on a pro rata basis or less than a pro rata basis and (h) has covenants and events of default (excluding, for the avoidance of doubt, pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) that are not materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness than the covenants and events of default of this Agreement (when taken as a whole) are to the Lenders (unless (x) such covenants or other provisions are applicable only to periods after the maturity date of the Refinanced Debt at the time of such refinancing, (y) the Revolving Lenders or the Lenders under the Initial Term Loans, as applicable, also receive the benefit of such more favorable covenants and events of default (including, without limitation, any financial maintenance covenant, and together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial maintenance covenant) (it being understood that, to the extent that any covenant, event of default or guarantee is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Indebtedness or (ii) only applicable after the Latest Maturity Date at the time of such refinancing (provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the requirement of this clause (y) unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination) or (z) such terms and conditions are reasonably satisfactory to the Administrative Agent). For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes “Credit Agreement Refinancing Indebtedness” and (y) such Credit Agreement Refinancing Indebtedness shall not be subject to any “most favored nation” pricing provisions.

“Cure Amount” has the meaning assigned to such term in Section 7.02(a).

“Cure Right” has the meaning assigned to such term in Section 7.02(a).

“Cure Termination Date” has the meaning assigned to such term in Section 7.02(a).

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, examinership or similar debtor relief laws of the United States, or other applicable jurisdictions (domestic or foreign) from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, upon notice, lapse of time or both hereunder would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means, subject to Section 2.22(b), any Lender that (a) has failed to perform any of its funding obligations hereunder (or otherwise failed to pay over to the Administrative Agent any amounts owed by such Lender hereunder), including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within two (2) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower, the Administrative Agent, the Swing Line Lender, any Issuing Bank or any Lender that it does not intend to comply with its funding obligations or has made a public statement or provided any written notification to any Person to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after request by the Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Administrative Agent shall comply with any such reasonable request)) or any Issuing Bank, to confirm in a manner satisfactory to the Administrative Agent, such Issuing Bank and the Borrower that it will comply with its funding obligations (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become or is insolvent (or has admitted in writing that it is insolvent), (ii) become the subject of a proceeding under any Debtor Relief Law, (iii) had a receiver, conservator, trustee, administrator, examiner, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a substantial part of its assets or a custodian appointed for it or a substantial part of its assets, (iv) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (v) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority, where such ownership interest or proceeding does not result in or provide such Lender or Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender or Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Lender or Person.

“Defaulting Lender Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Bank, such Defaulting Lender’s Applicable Percentage of the Loan Document Obligations with respect to the Letters of Credit issued by such Issuing Bank other than Loan Document 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, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of the Loan Document Obligations with respect to the Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Subsidiary in connection with a Disposition pursuant to Section 6.05(k) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

“Discount Prepayment Accepting Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(2).

“Discount Range” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Discount Range Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.11(a)(iii)(C) substantially in the form of Exhibit I.

“Discount Range Prepayment Offer” means the irrevocable written offer by a Term Lender, substantially in the form of Exhibit J, 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 2.11(a)(iii)(C)(1).

“Discount Range Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

“Discounted Prepayment Determination Date” has the meaning assigned to such term in Section 2.11(a)(iii)(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 Offers, five (5) Business Days following the receipt by each relevant Term Lender of notice from the Auction Agent in accordance with Section 2.11(a)(iii)(B), Section 2.11(a)(iii)(C) or Section 2.11(a)(iii)(D), as applicable 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 2.11(a)(iii)(A).

“Dispose” and “Disposition” each have the meaning assigned to such term in Section 6.05.

“Disposed EBITDA” means, with respect to any Sold Entity or Business or Converted Unrestricted Subsidiary for any period through (but not after) the date of such disposition or conversion, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to Holdings and its Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries or to such Converted Unrestricted Subsidiary and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests);

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof; or

(d) provides for the contractually scheduled payments of dividends in cash;

in each case, on or prior to the date ninety-one (91) days after the Latest Maturity Date; provided, however, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change in control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after the Termination Date and (ii) if an Equity Interest in any Person is issued



pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof) or any of its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof) or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person or as a result of such employee's termination, death or disability.

"Disqualified Lenders" means those Persons (the list of all such Persons, the "Disqualified Lenders List") that (i) were identified in writing by the Sponsor to the Joint Lead Arrangers as being "Disqualified Lenders" on or prior to June 20, 2017, (ii) are competitors of the Borrower and its Subsidiaries that are identified in writing by the Borrower or the Sponsor to the Administrative Agent from time to time, (iii) are (a) in the case of clause (i), any Affiliates of such Persons that either (x) were identified in writing by the Borrower to the Administrative Agent on or prior to June 20, 2017 or (y) are readily identifiable as an Affiliate of such Person on the basis of such Affiliate's name and (b) in the case of clause (ii), any Affiliates (other than bona fide debt funds, investment vehicles or fixed income investors that are engaged in making or purchasing commercial loans, bonds or similar extensions of credit in the ordinary course of business) of such Persons that are either (x) identified in writing by the Borrower from time to time or (y) readily identifiable on the basis of such Affiliate's name or (iv) Excluded Affiliates; provided that, to the extent Persons are identified as Disqualified Lenders in writing by the Borrower or the Sponsor to the Administrative Agent after the Effective Date pursuant to clauses (ii) or (iii)(b), the inclusion of such persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Upon inquiry by (i) any Lender to the Administrative Agent as to whether a specified potential assignee or prospective participant is a Disqualified Lender or (ii) any potential assignee as to whether such potential assignee is a Disqualified Lender, the Administrative Agent shall be permitted to disclose to such Lender and such specific potential assignee (x) whether such specific potential assignee or prospective participant is a Disqualified Lender or (y) the identity of any other Disqualified Lender which the Administrative Agent reasonably believes may be an Affiliate of such specified potential assignee or prospective participant.

"Disqualified Lenders List" has the meaning as set forth in the definition of Disqualified Lenders.

"Dollars" or "\$" refers to lawful money of the United States of America.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Exchange Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such currency.

"Domestic Subsidiary" means any Subsidiary of Holdings organized or incorporated in the United States (or any state thereof or the District of Columbia).

“ECF Percentage” means, with respect to the prepayment required by Section 2.11(d), with respect to any fiscal year of Holdings, if the Senior Secured First Lien Net Leverage Ratio (after giving effect to any voluntary prepayments made pursuant to Section 2.11(a) after the end of such fiscal year and prior to the date of such prepayment) as of the end of such fiscal year is (a) greater than 4.50 to 1.00, 50% of Excess Cash Flow for such fiscal year, (b) greater than 4.00 to 1.00 but less than or equal to 4.50 to 1.00, 25% of Excess Cash Flow for such fiscal year and (c) less than or equal to 4.00 to 1.00, 0% of Excess Cash Flow for such fiscal year.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means June 30, 2017.

“Effective Date Loan Parties” means (i) Holdings, (ii) the Borrower and (iii) each other Subsidiary of Holdings that is a Loan Party as of the Effective Date (if any) and specified on Schedule 1.01(b).

“Effective Yield” means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Administrative Agent and the Borrower and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors (the effect of which floors shall be determined in a manner set forth in the proviso below) or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (a) the remaining Weighted Average Life to Maturity of such Indebtedness and (b) the four years following the date of incurrence thereof) payable by the Borrower generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, syndication, commitment, prepayment, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with all relevant syndicate Lenders and, if applicable, consent fees for an amendment paid generally to consenting Lenders; provided that with respect to any Indebtedness that includes a “LIBOR floor” or “Base Rate floor”, (i) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the interest rate margin for such Indebtedness for the purpose of calculating the Effective Yield and (ii) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the Effective Yield.

“Electing Guarantor” means any Excluded Subsidiary that, at the option and in the sole discretion of the Borrower, has been designated a Subsidiary Loan Party; *provided*, for the avoidance of doubt, (x) unless otherwise expressly agreed by the Borrower, no Subsidiary that is an Excluded Subsidiary shall be a Loan Guarantor until and unless it ceases to be an Excluded Subsidiary, and (y) the Borrower may cause any Restricted Subsidiary that is not a Loan Guarantor to guarantee the Secured Obligations by causing such Restricted Subsidiary to become a Loan Guarantor under a Guarantee and a grantor under the applicable Security Documents in accordance with Section 5.13, and any such Restricted Subsidiary shall be a Loan Guarantor hereunder and under the other Loan Documents for all purposes; *provided*, that no Foreign Subsidiary shall become a Loan Guarantor unless (i) reasonably approved by the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) based upon (1) the amount and enforceability of the Guarantee that may be entered into by such Foreign Subsidiary based on such Foreign Subsidiaries jurisdiction of organization and (2) the Liens on the Collateral (and enforceability thereof) that may be granted with respect to assets (or various classes of assets) located in the jurisdiction of organization of such Foreign Subsidiary; and (ii) such security documents and other actions (including, without limitation, security documentation, delivery of legal opinions and other actions under the law of the jurisdiction of organization of the Electing Guarantor) reasonably requested by the Administrative Agent within such time periods as the Administrative Agent may agree in its reasonable discretion) shall have been delivered and/or taken to create and perfect the liens on the Collateral of such Foreign Subsidiary in its jurisdiction of incorporation.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than Holdings, the Borrower or any of their respective Affiliates), other than, in each case, (i) a natural person, (ii) a Defaulting Lender or (iii) a Disqualified Lender.

“Environmental Laws” means all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, common law, decrees and other applicable Requirements of Law and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to (1) pollution, (2) the protection of the environment, (3) preservation or reclamation of natural resources, (4) the use, handling, transportation, treatment, storage, presence, Release or threatened Release of, or exposure to, any Hazardous Material, or (5) to the extent relating to exposure to Hazardous Materials, to health or safety matters.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities) directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the presence, generation, use, handling, transportation, storage, or treatment 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 agreement to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person (whether evidenced by share certificates (or similar) or not).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA) with respect to the termination of any Plan or by application of Section 4069 of ERISA with respect to any terminated plan; (f) the receipt by a Loan Party or an ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or an intention to terminate or to appoint a trustee to administer any plan or plans in respect of which such Loan Party or ERISA Affiliate would be deemed to be an employer under Section 4069 of ERISA; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (h) the receipt by a Loan Party of any notice from any Multiemployer Plan, concerning the imposition of Withdrawal Liability, or the failure of a Loan Party or any ERISA Affiliate to pay when due, after the expiration of any applicable grace period, any installment payment with respect to any Withdrawal Liability; or (i) the withdrawal of a Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity 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.

“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.

“Eurodollar” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income for such period,
- (ii) an amount equal to the amount of all Non-Cash Charges to the extent deducted in arriving at such Consolidated Net Income,
- (iii) decreases in Consolidated Working Capital, and
- (iv) an amount equal to the aggregate net non-cash loss on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; less

(b) the sum, without duplication, of:

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (including any amounts included in Consolidated Net Income of proceeds received or due from business interruption insurance or reimbursement of expenses and charges pursuant to indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Agreement to the extent such amounts are due but not received during such period) and cash charges, expenditures and losses added to (or excluded from the determination of) Consolidated Net Income pursuant to clauses (a) through (i) of the definition of “Consolidated Net Income” (other than cash charges in respect of Transaction Costs paid on or about the Effective Date to the extent financed with the proceeds of long-term Indebtedness incurred on the Effective Date),

(ii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of capital expenditures and Intellectual Property development expenditures made in cash or accrued during such period, except to the extent that such expenditures were financed with the proceeds of long-term Indebtedness of Holdings and its Restricted Subsidiaries,

(iii) the aggregate amount of all principal payments of Indebtedness (including (1) Second Lien Term Loans, (2) the principal component of payments in respect of Capitalized Leases, (3) scheduled repayments of Initial Term Loans pursuant to Section 2.10(a), (4) scheduled repayments of other Senior Secured First Lien Indebtedness and (5) the amount of any mandatory prepayment of Loans to

the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding all other prepayments of Term Loans or other Senior Secured First Lien Indebtedness and all prepayments of revolving loans (including Revolving Loans (except to the extent the prepayment thereof reduces the Borrower's prepayment obligation pursuant to clause (i) of the proviso to the first sentence of Section 2.11(d))) made during such period, other than (A) in respect of any revolving credit facility except to the extent there is an equivalent permanent reduction in commitments thereunder and (B) to the extent financed with the proceeds of other long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(iv) an amount equal to the aggregate net non-cash gain on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period,

(vi) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of long-term liabilities of Holdings and its Restricted Subsidiaries other than Indebtedness,

(vii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of Investments (other than Investments in Permitted Investments) and acquisitions made in accordance with Section 6.04 (other than Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (j), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)) to the extent that such Investments and acquisitions were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(viii) the amount of dividends and other Restricted Payments (including the amount of Tax Distributions made by the Borrower during such period or payable after such period in respect of income generated during such period) pursuant to Section 6.07(a) (other than pursuant to Section 6.07(a)(i), (a)(ii), (a)(vi), (a)(xiii), (a)(xv) or (a)(xvii)), in each case to the extent not deducted in arriving at Consolidated Net Income) and paid in cash during such period or payable in respect of such period, to the extent such dividends and Restricted Payments were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries; provided that any amount deducted for such period in respect of amounts payable during a subsequent period shall not be deducted in any subsequent period and, to the extent not actually paid during such subsequent period, shall be added to Excess Cash Flow for such subsequent period,

(ix) the aggregate amount of payments and expenditures actually made by Holdings and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees and restructuring charges) to the extent that such payments and expenditures are not expensed during such period,

(x) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of Non-Cash Charges included in the calculation of Consolidated Net Income in any prior period,

(xi) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness, in each case to the extent not deducted in determining Consolidated Net Income,

(xii) at the option of the Borrower, and without duplication of amounts deducted from Excess Cash Flow in prior periods, (1) the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts, commitments, letters of intent or purchase orders (the "Contract Consideration"), in each case, entered into prior to or during such period, or at the option of the Borrower, after the applicable period and prior to the applicable Excess Cash Flow due date, and (2) to the extent set forth in a certificate of a Financial Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Test Period is required to be delivered pursuant to Section 5.01(d) (which shall be satisfied if such certification is included in the Compliance Certificate), the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash expenditures by the Borrower or any of the Restricted Subsidiaries (the "Planned Expenditures"), in the case of each of clauses (1) and (2), relating to Permitted Acquisitions, other Investments (other than Investments in Permitted Investments pursuant to Section 6.04(a) and Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)), restructuring charges, or capital expenditures (including Capitalized Software Expenditures or other purchases or development of Intellectual Property) to be consummated or made during a subsequent Test Period (and in the case of Planned Expenditures, the immediately succeeding fiscal year); provided that, to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions, Investments, restructuring charges or capital expenditures during such Test Period 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 Test Period, and

(xiii) the amount of taxes (including penalties and interest) paid in cash and/or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

(xiv) the aggregate amount of Transaction Costs incurred during such period to the extent not deducted in the calculation of Consolidated Net Income and were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries.

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

“Exchange Rate” has the meaning assigned to such term in Section 1.07.

“Excluded Affiliates” means any Affiliate of any Joint Lead Arranger or Lender that are engaged as principals primarily in private equity or venture capital transactions and any employees of any Joint Lead Arranger, Lender or any of their respective Affiliates engaged directly or indirectly in the sale of the Company as representatives of the Company other than such Joint Lead Arranger’s internal legal compliance, risk management, credit or investment committee members.

“Excluded Assets” means (a) any fee-owned real property that is not Material Real Property and all leasehold (including ground lease) interests in real property (including requirements to deliver landlord lien waivers, estoppels and collateral access letters), (b) motor vehicles and other assets subject to certificates of title or ownership (to the extent a security interest therein cannot be perfected by the filing of a UCC-1 financing statement), (c) letter of credit rights (except to the extent constituting supporting obligations (as defined under the UCC) in which a security interest can be perfected with the filing of a UCC-1 financing statement) with a value of less than \$2,500,000, (d) commercial tort claims with a value (as reasonably estimated by the Borrower) of less than \$2,500,000, (e) Excluded Equity Interests, (f) any lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (or any asset subject to such agreement or arrangement) with any Person if, to the extent and for so long as, the grant of a Lien thereon to secure the Secured Obligations (in each case, in existence on the Effective Date or upon the acquisition of the relevant Subsidiary party thereto or asset (so long as not entered into in contemplation thereof)) would require the consent of a third party (unless such consent has been received) (it being understood that no Loan Party shall be under any affirmative obligation to obtain such consent) or violate or invalidate, constitute a breach of or a default under, or create a right of termination in favor of any party (other than any Loan Party) to, such lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law), (g) any asset subject to a Lien of the type permitted by Section 6.02(iv) (whether or not incurred pursuant to such Section) or a Lien permitted by Section 6.02(xi), in the case of Liens permitted by Section 6.02(xi) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations constitutes a breach of or a default under, or creates a right of termination in favor of any party (other than any Loan Party) to, any agreement pursuant to which such Lien has been created (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) (provided that any such provision is not included by the Borrower or any Restricted Subsidiary principally for the purpose of taking advantage of the exclusion in this clause (g)), (h) (1) any intent-to-use Trademark applications filed in the United States Patent and Trademark Office, prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, but only to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application or any registration that may issue therefrom under applicable federal law and (2) any Intellectual Property registered, issued or applied for in, or arising under the laws of, any jurisdiction outside of the



United States, (i) any asset (including Equity Interests) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law, rule or regulation, contractual obligation existing on the Effective Date (or, if later, the date the Person owning the asset becomes a Restricted Subsidiary, so long as the applicable contractual obligation was not entered into in contemplation of such Person becoming a Restricted Subsidiary) or agreements with any Governmental Authority (other than to the extent that any such prohibition would be rendered ineffective pursuant to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) or which would require consent, approval, license or authorization from any Governmental Authority or regulatory authority (it being understood that there shall be no requirement to obtain the consent of any governmental authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute), unless such consent, approval, license or authorization has been received, (j) margin stock (within the meaning of Regulation U of the Board of Governors, as in effect from time to time), (k) Securitization Assets, (l) [reserved], (m) other than with respect to (i) the pledge of Equity Interests of a Loan Party and (ii) the pledge of assets by an Electing Guarantor which is a Foreign Subsidiary, any assets located or titled outside the United States, (n) assets acquired in connection with a Permitted Acquisition or other permitted Investment subject to liens permitted under this Agreement and which are (and for so long as) subject to contractual arrangements (not incurred in contemplation thereof) prohibiting a Lien securing the Secured Obligations (but only so long as such Lien is in existence), (o) any assets to the extent that the granting of a Lien thereon to secure the Secured Obligations could reasonably be expected to result in adverse (other than de minimis) tax or regulatory consequences, as reasonably determined by the Borrower; and (p) any assets with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed to in writing), the cost or burden of pledging such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom).

“Excluded Equity Interests” means Equity Interests in any (a) Unrestricted Subsidiary, (b) Immaterial Subsidiary (to the extent not a Guarantor), (c) Subsidiary that is a CFC, any Subsidiary that is a direct or indirect Subsidiary of a CFC and any Subsidiary that is a FSHCO (except that up to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of any Subsidiary that is a CFC, a direct or indirect Subsidiary of a CFC or a FSHCO shall not be Excluded Equity Interests), (d) joint ventures and Non-Wholly Owned Subsidiaries which cannot be pledged without the consent of third parties (it being understood that there shall be no obligation to obtain such consent) (after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law) or (e) not-for-profit Subsidiary, captive insurance company or special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary.

“Excluded Information” has the meaning assigned to such term in Section 2.11(a)(iii)(A).

“Excluded Subsidiary” means (a) any Subsidiary that is not a direct or indirect Wholly Owned Subsidiary of Holdings, (b) each Subsidiary listed on Schedule 1.01(a), (c) any Subsidiary that is prohibited by applicable law, rule or regulation or contractual obligation existing on the Effective Date or, if later, the date such Subsidiary first becomes a Restricted Subsidiary (but, in the case of a contractual obligation, to the extent not created in contemplation of such

Subsidiary becoming a Restricted Subsidiary), from guaranteeing the Secured Obligations or which would require (and, only for so long as) any governmental or regulatory consent, or third party consent, approval, license or authorization to do so, unless such consent, approval, license or authorization has been obtained, provided that such Subsidiary shall have no affirmative obligation to obtain such consent, (d) any Immaterial Subsidiary, (e) any Subsidiary to the extent the provision of a Guarantee by such Subsidiary could reasonably be expected to result in adverse (other than de minimis) tax consequences as reasonably determined by the Borrower, (f) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed in writing), the cost or burden of providing the Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (g) any Subsidiary that is (or, if it were a Loan Party, would be) an “investment company” under the Investment Company Act of 1940, as amended, (h) any not-for profit Subsidiaries, captive insurance companies or other special purpose subsidiaries, (i) any Foreign Subsidiary other than a Foreign Subsidiary that becomes a Subsidiary Loan Party pursuant to Section 5.13, (j) any direct or indirect Subsidiary of a CFC, (k) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary, (l) any Subsidiary that is a FSHCO, (m) each Unrestricted Subsidiary, (n) any Subsidiary for which the providing of a Guarantee could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties of such Subsidiary’s officers, directors, (or other governing body) or managers and (o) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition (or other Investment not prohibited by this Agreement) financed with Indebtedness permitted under Section 6.01 hereof as assumed Indebtedness and any Restricted Subsidiary thereof that Guarantees such Indebtedness, in each case to the extent such Indebtedness prohibits such Subsidiary from becoming a Loan Guarantor; provided that any Immaterial Subsidiary that is a signatory to any Collateral Agreement or the Guarantee Agreement shall be deemed not to be an Excluded Subsidiary for purposes of this Agreement and the other Loan Documents unless released in accordance herewith.

“Excluded Swap Obligation” means, with respect to any Loan Guarantor at any time, any Secured Swap Obligation under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act, if, and to the extent that, all or a portion of the guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Secured Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant”, as defined in the Commodity Exchange Act (determined after giving effect to any “Keepwell”, support or other agreement for the benefit of such Loan Guarantor, at the time such guarantee or grant of a security interest becomes effective with respect to such related Secured Swap Obligation). If a Secured Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Secured Swap Obligation that is attributable to swaps that are or would be rendered illegal due to such guarantee or security interest.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) such recipient’s net income (however denominated) and franchise Taxes, in each

case (i) imposed on it by a jurisdiction as a result of such recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, or (ii) that are Other Connection Taxes, (b) any branch profits tax imposed under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (a)(i) above, (c) any Tax imposed pursuant to FATCA, (d) any Tax that is attributable to a Lender's failure to comply with Section 2.17(f) and (e) any U.S. federal withholding Taxes imposed on amounts payable to a Lender pursuant to a Requirement of Law in effect at the time such Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.19 hereto) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive payment of additional amounts with respect to such withholding Taxes under Section 2.17(a).

"Existing Credit Agreements" means that certain First Lien Credit Agreement, dated as of October 12, 2016 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time), among Vivid Seats LLC, a Delaware limited liability company, Hoya Midco, LLC, a Delaware limited liability company, as a Guarantor (as defined therein), each of the other Guarantors (as defined therein), the Lenders (as defined therein) and other agents from time to time party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, as collateral agent, as Issuing Bank (as defined therein) and as the Swing Line Lender (as defined therein) and (y) that certain Second Lien Credit Agreement, dated as of October 12, 2016 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time), among Vivid Seats LLC, a Delaware limited liability company, Hoya Midco, LLC, a Delaware limited liability company, as a Guarantor (as defined therein), each of the other Guarantors (as defined therein) party thereto, the Lenders (as defined therein) from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent for the Lenders (as defined therein) and as collateral agent for the Secured Parties (as defined therein).

"Existing Letters of Credit" means each letter of credit that is outstanding on the Effective Date and set forth on Schedule 1.02.

"FATCA" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable thereto and not materially more onerous to comply with), any current or future Treasury regulations thereunder or other official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version described above) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"FCPA" has the meaning specified in Section 3.16(a).

"Federal Funds Effective Rate" means, for any day, the per annum rate equal to the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time), as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided that the Federal Funds Effective Rate, if negative, shall be deemed to be 0.00%.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, corporate controller or other officer with similar functions and responsibilities as the foregoing of Holdings or the Borrower, as applicable.

“Financial Performance Covenant” means the covenant set forth in Section 6.11.

“Financing Transactions” means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, (b) the borrowing of Loans hereunder and the use of the proceeds thereof, (c) the execution, delivery and performance by each Loan Party of the Second Lien Loan Documents to which it is to be a party, (d) the borrowing of the Second Lien Term Loans and the use of proceeds thereof and (e) the issuance, amendment or extension of Letters of Credit hereunder and the use of proceeds thereof.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means a Lender that is not a United States Person (as defined in Section 7701(a)(30) of the Code).

“Foreign Subsidiary” means any Restricted Subsidiary of Holdings other than a Domestic Subsidiary.

“Fronting Exposure Cap” means, with respect to each Issuing Bank, the product of (i) the Letter of Credit Sublimit multiplied by (ii) the Applicable Percentage of such Issuing Bank (or its affiliated Revolving Lender). The initial amount of each Issuing Bank’s Fronting Exposure Cap is set forth on Schedule 2.01.

“FSHCO” means any Subsidiary of Holdings substantially all of the assets of which are capital stock of one or more CFCs and, if applicable, debt of any such CFC.

“Funded Debt” means all Indebtedness of Holdings and its 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, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of any subsidiary at “fair value”, as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of Capital Lease Obligations.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether federal, state, provincial, territorial, 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 in any jurisdiction (including any supra national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or product warranty obligations. 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 in good faith by a Financial Officer. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee Agreement” means the First Lien Guarantee Agreement among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit B.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, or contaminants of any nature and in any form regulated pursuant to any Environmental Law.

“Historical Audited Financial Statements” means the audited consolidated balance sheet and the related consolidated statements of income and retained earnings and statement of cash flows of the Company and its subsidiaries for the fiscal years ending December 31, 2015 and December 31, 2016.

“Holdings” has the meaning given to such term in the introductory paragraph hereto; provided that upon and after an IPO, if the IPO Entity is Holdings or any Person of which Holdings is a wholly-owned Subsidiary, “Holdings” shall mean the IPO Entity.

“Holdings Parent” means any direct or indirect parent company of Holdings.

“Holdings Parent Specified Expenses” shall mean any charge, tax or expense incurred or accrued by any Holdings Parent during any period to the extent that Holdings has made a Restricted Payment (or has made any Investment in lieu thereof pursuant to Section 6.04(l)) to any Holdings Parent in respect thereof pursuant to Section 6.07(a)(vii), but in each case limited to the amount of such Restricted Payment or Investment.

“Identified Participating Lenders” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

“Identified Qualifying Lenders” has the meaning specified in Section 2.11(a)(iii)(D)(3).

“Immaterial Subsidiary” means any Subsidiary other than a Material Subsidiary.

“Impacted Loans” has the meaning specified in Section 2.14(b).

“Incremental Cap” means, as of any date of determination, the sum of (I)(a) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) amounts incurred prior to the date of determination in respect of all Incremental Facilities and Incremental Equivalent Debt, in each case, incurred in reliance on this clause (a) and any Indebtedness incurred under the Incremental Facilities and Incremental Equivalent Debt (each as defined in the Second Lien Credit Agreement) in reliance on clause (I)(a) of the Incremental Cap (as defined in the Second Lien Credit Agreement) (or any equivalent successor provision), (y) all amounts incurred pursuant to clause (A)(I)(x) of Section 6.01(a)(xv) and clause (A)(I)(x) of Section 6.01(a)(xvi))

and (z) any Indebtedness incurred under clause (A)(I)(x) of Section 6.01(a)(xv) or clause (A)(I)(x) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision); provided that the maximum amount deducted pursuant to this parenthetical shall not exceed the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended), plus (b)(i) the aggregate principal amount of all Term Loans voluntarily prepaid pursuant to Section 2.11(a)(i), (ii) the aggregate amount of all Term Loans repurchased and prepaid pursuant to Section 2.11(a)(iii) or otherwise in a manner not prohibited by Section 9.04(g), (iii) all reductions of Revolving Commitments pursuant to Section 2.08(b) and (iv) the aggregate principal amount of all Incremental Facilities and Incremental Equivalent Debt voluntarily prepaid or repurchased, in each case prior to such date (other than, in each case, prepayments, repurchases and commitment reductions (A) made with the proceeds of the incurrence of Credit Agreement Refinancing Indebtedness or other long-term Indebtedness or (B) of Incremental Facilities or Incremental Equivalent Debt that had been incurred in reliance on the following clause (II), Section 6.01(a)(vii), clause (II) of Section 6.01(a)(xv) or clause (II) of Section 6.01(a)(xvi)) (the sum of the amounts set forth in this clause (b), the “Voluntary Prepayment Amount”) (*minus* the sum of (1) the aggregate principal amount of all Incremental Facilities and all Incremental Equivalent Debt incurred in reliance on this clause (b) plus (2) the aggregate principal amount of Indebtedness incurred pursuant to clause (A)(I)(y) of Section 6.01(a)(xv) and clause (A)(I)(y) of Section 6.01(a)(xvi) plus (3) the aggregate principal amount of Indebtedness incurred pursuant to the Voluntary Prepayment Amount under and as defined in the Second Lien Credit Agreement) (or any equivalent successor provision) plus (II) the maximum aggregate principal amount that can be incurred without causing the Senior Secured First Lien Net Leverage Ratio, after giving effect to the incurrence of any such Incremental Facility or Incremental Equivalent Debt that is secured on a pari passu basis with the Initial Term Loans (which, except as otherwise provided below, shall assume that the full amount of any Incremental Facility or Incremental Equivalent Debt being established at such time is fully drawn and without deducting in calculating the numerator of such Senior Secured First Lien Net Leverage Ratio any cash proceeds thereof, provided that to the extent the proceeds of any such Incremental Facility, Incremental Equivalent Debt or any Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) are to be used to repay Indebtedness it shall not limit the Borrower’s ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, on a Pro Forma Basis (but without giving effect to any simultaneous incurrence of any Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) made pursuant to the foregoing clause (I)(a)), to exceed 5.00 to 1.00 for the most recent Test Period ended; provided that, in the case of an Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) that is secured by the Collateral on a junior lien basis to the Initial Term Loans, in lieu of complying with the Senior Secured First Lien Net Leverage Ratio set forth above in this clause (II), the Senior Secured Net Leverage Ratio, after giving effect to the incurrence of such junior lien Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) (which compliance with such Senior Secured Net Leverage Ratio, subject to the immediately following proviso, shall be determined giving effect to any undrawn amount of any Incremental Facility or Incremental Equivalent Debt established at such time as if such Incremental Facility or Incremental Equivalent Debt is fully drawn and without deducting in calculating the numerator of such Senior Secured Net Leverage Ratio any cash proceeds thereof, provided, however, that any use thereof to repay Indebtedness shall be given pro forma effect as

contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, shall not exceed 6.75 to 1.00 on a Pro Forma Basis for the most recent Test Period ended; provided, further, that if such Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) is unsecured, in lieu of complying with the Senior Secured First Lien Net Leverage Ratio or Senior Secured Net Leverage Ratio set forth above in this clause (II), the Total Net Leverage Ratio, after giving effect to the incurrence of such Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) (which compliance with such Total Net Leverage Ratio, subject to the immediately following proviso, shall be determined giving effect to any undrawn amount of any Incremental Facility established at such time as if such Incremental Facility is fully drawn and without deducting in calculating the numerator of such Senior Secured Net Leverage Ratio any cash proceeds thereof, provided, however, that any use thereof to repay Indebtedness shall be given pro forma effect as contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, shall not exceed 6.75 to 1.00 on a Pro Forma Basis for the most recent Test Period ended. Any ratio calculated for purposes of determining the “Incremental Cap” shall be calculated on a Pro Forma Basis for the most recent Test Period ended and subject to Section 1.06 to the extent applicable and, at the option of the Borrower, any unfunded Incremental Facility or Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) may be tested at the time of the initial funding in lieu of the time of establishment. Loans may be incurred under both clauses (I) and (II), and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (II) above and then calculating the incurrence under clause (I)(b) above and then calculating the incurrence under clause (I)(a) above) (if any) and, for the avoidance of doubt, the Senior Secured First Lien Net Leverage Ratio, Senior Secured Net Leverage Ratio or Total Net Leverage Ratio, as applicable shall be permitted to exceed the maximum ratio set forth in clause (II) above to the extent of such amounts incurred in reliance on clause (I) at substantially the same time. Unless the Borrower otherwise elects in writing to the Administrative Agent, the Borrower shall be deemed to have used amounts, if any, that are available under clause (II) above prior to the utilization of amounts under clause (I) above.

“Incremental Equivalent Debt” has the meaning assigned to such term in Section 6.01(a)(xxiii).

“Incremental Facility” has the meaning assigned to such term in Section 2.20(a).

“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.20(d).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.20(d).

“Incremental Loan” has the meaning assigned to such term in Section 2.20(a).

“Incremental Revolving Commitment Increase” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Facility” has the meaning assigned to such term in Section 2.20(a).



“Incremental Term Increase” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Loan” means any Term Loan provided under any Incremental Term Facility.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) trade accounts payable in the ordinary course of business, (y) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after being due and payable and (z) expenses accrued in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; provided that the term “Indebtedness” shall not include (i) deferred or prepaid revenue, deferred tax liabilities, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA and other accrued obligations (including transfer pricing), and customary obligations under employment agreements and deferred compensation, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty, indemnity or other unperformed obligations of the seller, or other contingent post-closing purchase price adjustments, non-compete or consulting obligations, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Person that is a Holdings Parent appearing on the balance sheet of Holdings or the Borrower, or solely by reason of push down accounting under GAAP, or (v) for the avoidance of doubt, any Qualified Equity Interests issued by Holdings or the Borrower. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business. The amount of any Indebtedness issued at a discount to the initial principal amount thereof shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

“Indemnified Taxes” means (a) 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 and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 9.12(a).

“Information Memorandum” means the Confidential Information Memorandum dated June 13, 2017, relating to Holdings and the Transactions.

“Initial Term Loans” means the Loans made pursuant to Section 2.01(a).

“Intellectual Property” has the meaning assigned to such term in the Collateral Agreement.

“Intellectual Property Security Agreements” means short-form security agreements, suitable for filing with the United States Patent and Trademark Office or the United States Copyright Office (as applicable), with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral.

“Intercompany License Agreement” means any cost sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, intellectual property rights transfer agreement or any related agreements, in each case where all the parties to such agreement are one or more of Holdings or a Restricted Subsidiary.

“Intercreditor Agreement” means the Pari Passu Intercreditor Agreement, the Closing Date Intercreditor Agreement or the Junior Intercreditor Agreement, as applicable.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.07, substantially in the form of Exhibit C-2.

“Interest Payment Date” means (a) with respect to any ABR Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date such Borrowing is disbursed or converted to or continued as a Eurodollar Borrowing and ending on the date that is one, two, three or six months thereafter as selected by the Borrower in its Borrowing Request (or, if available to each Lender participating therein, twelve (12) months or any shorter period as the Borrower may elect); provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to

the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month at the end of such Interest Period and (c) no Interest Period shall extend beyond (i) in the case of Term Loans, the Term Maturity Date and (ii) in the case of Revolving Loans, the Revolving Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means in relation to the “LIBO Rate” for any Loan, the rate which results from interpolating on a linear basis between: (i) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period and (ii) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period, each as of approximately 11:00 A.M., London, England time, two (2) Business Days prior to the commencement of such Interest Period; provided that the Interpolated Rate, if negative, shall be deemed to be 0.00%.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of Holdings and its Subsidiaries (i) intercompany advances arising from their cash management, tax, and accounting operations and (ii) intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; provided that, in the event that any Investment is made by Holdings or any Restricted Subsidiary in any Person through one or more other substantially concurrent interim transfers of any amount through any other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 6.04. The amount, as of any date of determination, of (a) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (b) any Investment in the form of a Guarantee shall be 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 in good faith by a Financial Officer, (c) any

Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by a Financial Officer) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (d) any Investment (other than any Investment referred to in clause (a), (b) or (c) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (i) the cost of all additions thereto and minus (ii) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (ii) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“Investor” means investors designated by the Sponsor (including Management Investors) who, immediately after giving effect to the Acquisition, will hold Equity Interests in the Company (or any direct or indirect parent thereof) (including, for the avoidance of doubt, the Sponsor).

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time upon and after an IPO, Holdings or a Holdings Parent, as the case may be, the Equity Interests of which were issued or otherwise sold pursuant to the IPO; provided that, immediately following the IPO, the Borrower is a Wholly Owned Subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.

“ISP” means, with respect to any standby 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 reasonably acceptable to the applicable Issuing Bank and in effect at the time of issuance of such Letter of Credit).

“Issuing Bank” means each of (a) the Administrative Agent, (b) each other Revolving Lender as of the Effective Date and (c) each Revolving Lender that shall have become an Issuing Bank hereunder as provided in Section 2.05(k) (other than any Person that shall have ceased to be an Issuing Bank as provided in Section 2.05(l)). Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate or such branch with respect to Letters of Credit issued by such Affiliate or such branch. Jefferies Finance LLC will cause Letters of Credit to be issued by unaffiliated financial institutions and such Letters of Credit shall be treated as issued by Jefferies Finance LLC for all purposes under the Loan Documents.

“Joint Lead Arranger” means Barclays Bank PLC, RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, each in its capacity as joint lead arranger and joint bookrunner, and any permitted successors and assigns of the foregoing.

“Judgment Currency” has the meaning assigned to such term in Section 9.17.

“Junior Financing” means (a) any Indebtedness (other than (i) any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary or any Permitted Unsecured Refinancing Debt or (ii) any Indebtedness in an aggregate principal amount not exceeding \$30,000,000) that is subordinated in right of payment to the Loan Document Obligations or that is secured by the Collateral on a junior lien basis relative to the liens granted pursuant to the Loan Documents securing the Initial Term Loans (including, for the avoidance of doubt, the Second Lien Term Loans) and (b) any Permitted Refinancing in respect of the foregoing.

“Junior Intercreditor Agreement” means the Junior Intercreditor Agreement substantially in the form of Exhibit E-3 among the Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a junior basis, with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“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 Other Term Loan, any Other Term Commitment, any Other Revolving Loan or any Other Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

“LC Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or renewal or increase of the amount thereof.

“LC Disbursement” means an honoring of a drawing by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate amount of all Letters of Credit that remains available for drawing at such time and (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage

of the total LC Exposure 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 3.13 or 3.14 of the ISP or for any Letter of Credit issued with the exclusion of Article 36 of the UCP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the 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.

“LCT Election” has the meaning assigned to such term in Section 1.06.

“LCT Test Date” has the meaning assigned to such term in Section 1.06.

“Legal Reservations” means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court (regardless of whether considered in a proceeding in equity or at law), the limitation of enforcement by Debtor Relief Laws and laws relating to judicial management, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and similar principles or limitations under the laws of any applicable jurisdiction;

(b) the time barring of claims under applicable limitation laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defenses of set-off or counterclaim and similar principles or limitations under the laws of any applicable jurisdiction;

(c) any general principles, reservations or qualifications, in each case as to matters of law as set out in any legal opinion delivered to the Administrative Agent in connection with any provision of any Loan Document;

(d) the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

(e) the principle that in certain circumstances security granted by way of fixed charge may be characterized as a floating charge or that security purported to be constituted by way of an assignment may be recharacterized as a charge;

(f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

(g) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition against transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach entitling the contracting party to terminate or take any other action in relation to such contract or agreement;

(h) [reserved]; and

(i) similar principles, rights and defenses under the laws of any relevant jurisdiction.

“Lenders” means the Persons listed on Schedule 2.01 as a Lender and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, an Incremental Facility Amendment, a Loan Modification Agreement or a Refinancing Amendment, in each case, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption and, as the context requires, includes an Issuing Bank and a Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender”.

“Letter of Credit” means any standby letter of credit issued pursuant to this Agreement other than any such letter of credit that shall have ceased to be a “Letter of Credit” outstanding hereunder pursuant to Section 9.05.

“Letter of Credit Request” has the meaning assigned to such term in Section 2.05(b).

“Letter of Credit Sublimit” means \$10,000,000.

“LIBO Rate” means, for any Interest Period with respect to a Eurodollar Borrowing, the rate per annum equal to (i) the London interbank offered rate administered by ICE Benchmark Administration Limited (or such other commercially available source providing quotations of that rate as may be designated by the Administrative Agent from time to time, including any Person that takes over administration of the rate) displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters) at approximately 11:00 a.m., London, England time, two (2) London Banking Days prior to the commencement of such Interest Period, for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the Interpolated Rate; provided that the LIBO Rate, if negative, shall be deemed to be 0.00%.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, assignment by way of security, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Limited Condition Transaction” means any (1) any acquisition by the Borrower or one or more Restricted Subsidiaries of (or investment in) any assets, business, division or person/entity permitted pursuant to this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any irrevocable debt repurchase or

prepayment, or (3) Restricted Payment by the Borrower or any Restricted Subsidiary permitted pursuant to this Agreement; provided that the Consolidated Net Income (and any other financial defined term derived therefrom) shall not include any Consolidated Net Income of or attributable to the target company or assets associated with any such Limited Condition Transaction for usages other than in connection with the applicable transaction pertaining to such Limited Condition Transaction unless and until the closing of such Limited Condition Transaction shall have actually occurred.

“Loan Document Obligations” means the due and punctual payment by the Borrower of (i) the principal of the Loans and LC Disbursements, and all accrued and unpaid interest thereon at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expenses, reimbursement obligations and indemnification obligations and obligations to provide cash collateral, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding); provided that for the avoidance of doubt, the “Loan Document Obligations” of any Loan Party shall not include any Excluded Swap Obligation of such Loan Party.

“Loan Documents” means this Agreement, any Refinancing Amendment, any Loan Modification Agreement, any Incremental Facility Amendment, the Guarantee Agreement, the Collateral Agreement, the other Security Documents, the Closing Date Intercreditor Agreement and any other Intercreditor Agreement (if applicable), except for purposes of Section 9.02, any Note delivered pursuant to Section 2.09(e), and any other document entered into or delivered by a Loan Party in connection with the foregoing and designated by the Borrower as a Loan Document therein for purposes of this Agreement.

“Loan Equivalent” has the meaning specified in the definition of “Required Additional Debt Terms”.

“Loan Guarantors” means Holdings and the Subsidiary Loan Parties, in each case, to the extent such entity provides a guaranty of the Secured Obligations.

“Loan Modification Agreement” means a Loan Modification Agreement, among the Borrower, and one or more Accepting Lenders, and acknowledged by the Administrative Agent, effecting one or more Permitted Amendments and such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.24.

“Loan Modification Offer” has the meaning specified in Section 2.24(a).

“Loan Parties” means the Loan Guarantors and the Borrower.



“Loans” means the loans made by the Lenders and Swing Line Lender to the Borrower pursuant to this Agreement.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Majority in Interest”, when used in reference to Lenders of any Class, means, at any time, (a) in the case of the Revolving Lenders, Lenders having Revolving Exposures and unused Revolving Commitments representing more than 50% of the sum of the aggregate Revolving Exposures and the unused aggregate Revolving Commitments at such time and (b) in the case of the Term Lenders of any Class, Lenders holding outstanding Term Loans of such Class representing more than 50% of all Term Loans of such Class outstanding at such time; provided that whenever there are one or more Defaulting Lenders, the total outstanding Term Loans and Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender shall be excluded for purposes of making a determination of the Majority in Interest.

“Management Investors” means the members of the Board of Directors, officers, employees and shareholders of the Company, the Borrower and/or their respective Subsidiaries (in each case, before giving effect to the Acquisition) who, immediately after giving effect to the Acquisition, are (directly or indirectly through one or more investment vehicles) investors in Holdings or any Holdings Parent and, in each case, each of their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement”.

“Material Adverse Effect” means any event, change or condition that, individually or in the aggregate, has had or could reasonably be expected to have (a) a material adverse effect on the business, assets, financial condition or results of operations of the Loan Parties and their Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, or (c) a material adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness for borrowed money (other than the Loan Document Obligations), Capital Lease Obligations, unreimbursed obligations for letter of credit drawings and financial guarantees (other than ordinary course of business contingent reimbursement obligations) or obligations in respect of one or more Swap Agreements, of any one or more of Holdings and its Restricted Subsidiaries in an aggregate principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Non-Public Information” means (a) if Holdings is a public reporting company, material non-public information with respect to Holdings or its Subsidiaries, or the respective securities of any of the foregoing, and (b) if Holdings is not a public reporting company,

information that is (i) of a type that would not be publicly available if Holdings were a public reporting company and (ii) material with respect to Holdings or its Subsidiaries or any of their respective securities for purposes of United States Federal and state securities laws.

“Material Real Property” means any real property (including fixtures) located in the United States of America and owned in fee by any Loan Party with a fair market value, as reasonably determined by the Borrower in good faith, greater than or equal to \$5,000,000.

“Material Subsidiary” means each Wholly Owned Restricted Subsidiary that, as of the last day of the fiscal quarter of Holdings most recently ended, had net revenues or total assets for such quarter in excess of 5.0% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter; provided that in the event that the Immaterial Subsidiaries, taken together, had as of the last day of the fiscal quarter of Holdings’ most recently ended net revenues or total assets in excess of 7.5% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter, as applicable, the Borrower shall designate in writing one or more Immaterial Subsidiaries to be a Material Subsidiary within ten (10) Business Days of the delivery of financial statements in accordance with Section 5.01(a) or (b) as may be necessary such that the foregoing 7.5% limit shall not be exceeded, and any such Subsidiary shall thereafter be deemed to be an Material Subsidiary hereunder and shall comply with the requirements set forth in Section 5.11 within the time periods set forth therein; provided, further, that the Borrower may re-designate Material Subsidiaries as Immaterial Subsidiaries so long as the Borrower is in compliance with the foregoing.

“Maximum Rate” has the meaning assigned to such term in Section 9.16.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, charge, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time. Each Mortgage shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

“Mortgaged Property” means each parcel of Material Real Property with respect to which a Mortgage will (or is required to be) be granted pursuant to the Collateral and Guarantee Requirement, Section 5.11, Section 5.12 or Section 5.14 (if any).

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase

price adjustment or earn-out, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and any Restricted Subsidiaries in connection with such event (including attorney's fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans or other Indebtedness secured by a Lien that ranks pari passu with or subordinated to the Liens securing the Initial Term Loans and otherwise subject to the terms of Section 2.11(e)) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, the Borrower or the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by the Borrower or any Restricted Subsidiary and (iii) the amount of all taxes (including Tax Distributions) paid (or reasonably estimated to be payable), the amount of dividends and other restricted payments that Holdings, the Borrower and/or its Restricted Subsidiaries may make pursuant to Section 6.07(a)(vii)(A) or (B) as a result of such event, and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

"New Project" shall mean (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by Holdings or its Subsidiaries which in fact commences operations and (b) each creation (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

"Non-Accepting Lender" has the meaning assigned to such term in Section 2.24(c).

"Non-Cash Charges" means (a) any impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities pursuant to GAAP, (b) all losses from Investments recorded using the equity method, (c) all Non-Cash Compensation Expenses, (d) depreciation and amortization including amortization or impairment of intangibles (including goodwill) (including, without limitation, as they relate to amortization of deferred financing fees or costs, Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pension and other post-employment benefits) and (f) other non-cash charges, expenses and losses, including, without limitation, any non-cash translation loss and non-cash expense relating to the vesting of warrants, non-cash asset write-offs or write-downs, non-cash write offs of debt discounts

and debt incurrences, non-cash costs and commissions, non-cash discounts and other non-cash fees and charges with respect to Indebtedness, interest rate protection and other hedging agreements, provided, in each case, that if any non-cash charges added back pursuant to clause (iii) of the definition of Consolidated EBITDA represent an accrual or reserve for potential cash items in any future period to the extent the Borrower elects to include such non-cash charges, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent.

“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Non-Refinancing Lender” has the meaning assigned to such term in Section 2.21(b).

“Non-Wholly Owned Subsidiary” of any Person means any subsidiary of such Person other than a Wholly Owned Subsidiary.

“Not Otherwise Applied” means, with reference to the Available Amount or the Available Equity Amount, as applicable, that such amount was not previously applied pursuant to Sections 6.01(a)(xvii), 6.04(m), 6.07(a)(viii) and 6.07(b)(iv).

“Note” means a promissory note of the Borrower, in substantially the form of Exhibit O, payable to a Lender in a principal amount equal to the principal amount of the Revolving Commitment, Swing Line Sublimit or Term Loans, as applicable, of such Lender.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Offered Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Offered Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational, constitutional or governing documents of such Person (including any certificates of incorporation and/or certificates of incorporation on a change of name).

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

“Other Revolving Commitments” means one or more Classes of Revolving Commitments hereunder or extended Revolving Commitments that result from a Refinancing Amendment or a Loan Modification Agreement.

“Other Revolving Loans” means one or more classes of Revolving Loans made pursuant to any Other Revolving Commitment or a Loan Modification Agreement.

“Other Taxes” means any and all present or future recording, filing, stamp, court, registration duties, documentary, intangible, excise, transfer, sales, property or similar Taxes, charges or levies arising from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than assignment pursuant to Section 2.19).

“Other Term Commitments” means one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment or a Loan Modification Agreement.

“Other Term Loans” means one or more Classes of Term Loans that result from a Refinancing Amendment or a Loan Modification Agreement.

“Outstanding Amount” means (a) with respect to the Revolving Loans and Swing Line Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or LC Credit Extensions as a Borrowing of Revolving Loans) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any LC Exposure on any date, the outstanding amount thereof on such date after giving effect to any LC Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or LC Credit Extensions as a Borrowing of Revolving Loan) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Overnight Rate” means, for any day, the greater of the Federal Funds Effective Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“Pari Passu Intercreditor Agreement” means the Pari Passu Intercreditor Agreement substantially in the form of Exhibit E-1 among the Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a pari passu basis (but without regard to the control of remedies), with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“Participant” has the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 9.04(c)(ii).

“Participating Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Patents” has the meaning assigned to such term in the Collateral Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means the purchase or other acquisition, by merger, amalgamation, consolidation or otherwise, by the Borrower or any Subsidiary of any Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person; provided that (a) in the case of any purchase or other acquisition of Equity Interests of another Person, (i) such Person, upon the consummation of such purchase or acquisition, will be a Subsidiary (including as a result of a merger, amalgamation or consolidation between any Subsidiary and such Person), or (ii) such Person is merged or amalgamated into or consolidated with a Subsidiary and such Subsidiary is the surviving entity of such merger, amalgamation or consolidation, (b) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 5.16, (c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to satisfy the requirements set forth in clauses (a), (b), (c) and (d) of the definition of the term “Collateral and Guarantee Requirement” to the extent applicable shall have been taken (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made that are reasonably satisfactory to the Administrative Agent) (unless such newly created or acquired Subsidiary is designated as an Unrestricted Subsidiary pursuant to Section 5.13 or is otherwise an Excluded Subsidiary), provided, however, that to the extent such newly created or acquired Subsidiary will not become a Loan Party, the amount of any Investment in such newly created or acquired Subsidiary does not exceed the greater of (A) \$25,000,000 and (B) 25% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment, (d) Consolidated EBITDA of such Person (after giving effect to any adjustments and add-backs in accordance with the definition of “Consolidated EBITDA”, “Consolidated Net Income”, and “Pro Forma Adjustment”) shall be greater than \$0 for the most recently ended twelve-month period for which financials are available immediately preceding the date on which the relevant binding agreement has been executed and delivered, (e) after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing (or, in the case of an acquisition which is a Limited Condition Transaction, no Event of Default shall have occurred and be continuing at the time of execution of a definitive agreement in respect thereof), (f) such acquisition shall not be hostile and (g) if applicable, shall have been approved by the Board of Directors and/or the stockholders or other equityholders of such Person or, if applicable, pursuant to a sale order approved by a bankruptcy court.

“Permitted Amendment” means an amendment to this Agreement and, if applicable the other Loan Documents, effected in connection with a Loan Modification Offer pursuant to Section 2.24, providing for an extension of a maturity date applicable to the Loans and/or Commitments of the Accepting Lenders and, in connection therewith, (a) a change in the

Applicable Rate with respect to the Loans and/or Commitments of the Accepting Lenders, and/or (b) a change in the fees payable to, or the inclusion of new fees to be payable to, the Accepting Lenders, and/or (c) a change in Sections 2.08(b), 2.08(c), 2.10(a), 2.10(c), 2.11(a), 2.11(e) and/or 2.11(f) with respect to the Loans and/or Commitments of the Accepting Lenders and/or (d) additional or modified covenants, events of default, or guarantees or other provisions (it being understood that to the extent that any covenant, event of default, guarantee or such other provision is added or modified for the benefit of any such Loans and/or Commitments, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default, guarantee or other provision is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Loans and/or Commitments, (ii) only applicable after the Latest Maturity Date at the time of such Loan Modification Offer or (iii) in the aggregate, not materially more restrictive to the Loan Parties (as determined in good faith by the Borrower) when taken as a whole, than the terms of the Loans hereunder).

“Permitted Encumbrances” means:

(a) Liens for Taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are not required to be paid pursuant to Section 5.05 (assuming Section 5.05 were applicable thereto);

(b) Liens with respect to outstanding motor vehicle fines and carriers', warehousemen's, mechanics', materialmen's, landlord's, repairmen's or construction contractors' Liens and other similar Liens, imposed by law or contract (to the extent providing for Liens that are similar in scope to the foregoing), arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days, or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance, social security, retirement and other similar legislation or (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instrument for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);

(d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, completion guarantees, bankers acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) 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 past practices;

(e) minor survey exceptions, minor encumbrances, covenants, conditions, easements, rights-of-way, restrictions, encroachments, protrusions, by-law, regulation or zoning restrictions, reservations of or rights of others for sewers, electric lines, telegraph and telephone lines, cable television lines, gas and oil pipelines and other similar purposes and other similar encumbrances and minor title defects or irregularities affecting real property, that, in the aggregate, do not materially interfere with the ordinary conduct of the business of Holdings and its Restricted Subsidiaries, taken as a whole, or which are set forth in the title insurance policy delivered with respect to the Mortgaged Property and are “insured over” in such insurance policy;

(f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);

(g) Liens on goods the purchase price of which is financed by a documentary or trade letter of credit issued for the account of the Borrower or any of its Restricted Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments; provided that such Lien secures only the obligations of the Borrower or such Subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;

(h) the filing of UCC (or equivalent) financing statements solely as a precautionary measure or required notice in connection with operating leases or consignment of goods;

(i) rights of recapture of unused real property (other than any Mortgaged Property) in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any Governmental Authority;

(j) Liens in favor of deposit banks or securities intermediaries securing customary fees, expenses or charges in connection with the establishment, operation or maintenance of deposit accounts or securities accounts;

(k) [Reserved];

(l) Liens arising from grants of licenses or sublicenses of Intellectual Property made in the ordinary course of business or that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole; provided that such Liens do not secure any Indebtedness;

(m) rights of setoff, banker’s lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of 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;

(n) [Reserved];



(o) securities to public utilities or to any Governmental Authority when required by the utility or other authority in connection with the supply of services or utilities to the Borrower and any Restricted Subsidiaries;

(p) servicing agreements, development agreements, site plan agreements and other agreements with any Governmental Authority pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially reduce the value of the assets of the Person or materially interfere with the use of such assets in the operation of the business of such Person;

(q) any security or quasi-security arising under any retention-of-title arrangement;

(r) [Reserved];

(s) customary rights of first refusal or first offer, and tag, drag and similar rights in joint venture agreements;

(t) Liens arising from Permitted Investments described in clause (e) of the definition hereof; and

(u) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Requirements of Law in the ordinary course of business.

“Permitted First Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of senior secured notes or senior secured loans (or revolving commitments in respect thereof, with revolving commitments deemed loans in the full amount of such commitment); provided that (i) such Indebtedness is secured by the Collateral (and no other assets which are not Collateral) on a pari passu basis (but without regard to the control of remedies) with the Initial Term Loans, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments” or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by an entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Pari Passu Intercreditor Agreement and, if applicable, the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement; provided that if such Indebtedness is the initial Permitted First Priority Refinancing Debt incurred by the Borrower, then the Borrower, the other Loan Parties, the Administrative Agent and the Senior Representative for such Indebtedness shall have executed and delivered a customary intercreditor agreement with the Administrative Agent and/or Collateral Agent substantially in the form of the Pari Passu Intercreditor Agreement, together with any immaterial changes to provide for the sharing of the Collateral on a pari passu basis among the holders of the Secured Obligations that constitute Senior Secured First Lien Indebtedness and the holders of such Permitted First Priority Refinancing Debt (it being understood that junior Liens are not required to be pari passu with other junior Liens, and

that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans). Permitted First Priority Refinancing Debt will include any Registered Equivalent Note issued in exchange therefor.

“Permitted Holders” means the Sponsor and limited partners of the Sponsor, Vista and limited partners of Vista, and the Management Investors.

“Permitted Investments” means any of the following, to the extent owned by Holdings or any Restricted Subsidiary:

(a) Dollars or such other currencies held by it from time to time in the ordinary course of business;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of such country or such member state of the European Union is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks or (y) \$100,000,000 in the case of non-U.S. banks, or the U.S. Dollar Equivalent (any such bank in the foregoing clauses (i) or (ii) being an “Approved Bank”), in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of \$250,000,000 or its equivalent for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, in which such Person shall have a perfected first priority security interest (subject to no other Liens) or title to which shall have been transferred to such Person and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of \$250,000,000 or its equivalent, or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(g) securities with average maturities of twelve (12) months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, Canada, Switzerland, United Kingdom, a member of the European Union or by any political subdivision or taxing authority of any such state, member, commonwealth or territory having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) investments with average maturities of twelve (12) months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized or incorporated in such jurisdiction;

(j) investments, classified in accordance with GAAP as current assets of the Borrower or any Subsidiary, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000 or its equivalent, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;

(k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than twenty-four (24) months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

“Permitted Junior Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of junior lien secured notes or junior lien secured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness is secured by the Collateral on a junior lien basis to the Initial Term Loans and/or initial Revolving Commitments and the obligations in respect of any Permitted First Priority Refinancing Debt, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments”, offers upon an event of default or excess cash flow payments (subject to the prior payment of the Loan Document Obligations or the prior offer thereof to prepay the Loan Document Obligations)) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by any entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement, as applicable; provided that if such Indebtedness is the initial Permitted Junior Priority Refinancing Debt incurred by the Borrower, then the Borrower, the other Loan Parties, the Administrative Agent and the Senior Representatives for such Indebtedness shall have executed and delivered the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement, as applicable. Permitted Junior Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees (including original issue discount and fees incurred in connection with the resulting Indebtedness) and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder; provided that the principal amount (or accreted value, if applicable) may exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended to the extent such excess amount (and the terms thereof) is otherwise permitted to be incurred under Section 6.01 (provided that such excess amount shall constitute a utilization of the relevant basket or exception under Section 6.01 pursuant to which such excess amount is permitted to be incurred), (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.01(a)(v), (a)(vii) or (a)(viii) (or except in the case of customary bridge loans which, subject to customary conditions (including no event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended), Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and (except in the case of revolving commitments) has a

Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended and (c) (1) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Document Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Document Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith) or otherwise reasonably satisfactory to the Administrative Agent and (2) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of security to the Initial Term Loans, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of security to the Initial Term Loans on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith) or otherwise reasonably satisfactory to the Administrative Agent. For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes a "Permitted Refinancing" and (y) a Permitted Refinancing includes successive Permitted Refinancings of the same Indebtedness.

"Permitted Reorganization" means any re-organization or other similar activities among Holdings, the Borrower and the Restricted Subsidiaries related to Tax planning and re-organization, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with the Collateral and Guarantee Requirement and Sections 5.11 and 5.12, (b) taken as a whole, the value of the Collateral securing the Secured Obligations and the Guarantees by the Loan Guarantors of the Secured Obligations are not materially reduced as reasonably determined by the Administrative Agent and (c) the Liens in favor of the Administrative Agent for the benefit of the Secured Parties under the Security Documents are not materially impaired in the reasonable judgment of the Administrative Agent.

"Permitted Unsecured Refinancing Debt" means any unsecured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of unsecured notes or unsecured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (ii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, "AHYDO catch-up payments" or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iii) such Indebtedness is not guaranteed by any entity that is not a Loan Party, and (iv) such Indebtedness is not secured by any Lien on any property of Holdings, the Borrower or any Restricted Subsidiary. Permitted Unsecured Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

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

“**Plan**” means any employee pension benefit plan as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is or has been in the past six years sponsored, maintained or required to be contributed to by a Loan Party or any ERISA Affiliate.

“**Planned Expenditures**” has the meaning assigned to such term in clause (b) of the definition of “Excess Cash Flow”.

“**Platform**” has the meaning assigned to such term in Section 5.01.

“**Prepayment Event**” means:

(a) (i) any sale, transfer or other disposition of any property or asset of Holdings or any of its Restricted Subsidiaries permitted by Sections 6.05(f), (j), (k), (p) and (t), other than dispositions resulting in aggregate Net Proceeds not exceeding (A) \$15,000,000 in the case of any single transaction or series of related transactions and (B) \$30,000,000 for all such transactions during any fiscal year of Holdings and (ii) any Casualty Event; or

(b) the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 (other than any Credit Agreement Refinancing Indebtedness) or permitted by the Required Lenders pursuant to Section 9.02.

“**Prepayment Percentage**” means:

(a) with respect to Prepayment Events described in clause (b) of the definition of “Prepayment Event”, 100%; and

(b) with respect to Prepayment Events described in clause (a) of the definition of “Prepayment Event”, (x) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Effective Date, 100% and (y) thereafter, the applicable percentage set forth below under the caption “Prepayment Percentage”, as determined by reference to the Senior Secured Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d).

<i>Senior Secured Net Leverage Ratio</i>	<i>Prepayment Percentage</i>
Greater than 6.00 to 1.00	100%
Less than or equal to 6.00 to 1.00 but greater than 5.25 to 1.00	50%
Less than or equal to 5.25 to 1.00	0%

For purposes of the foregoing, each change in the Prepayment Percentage resulting from a change in the Senior Secured Net Leverage Ratio shall be effective during the period commencing on and including the date a Compliance Certificate is delivered pursuant to Section 5.01(d) indicating such change and ending on the date immediately preceding the effective date of the next such change.

“Prime Rate” means, for any day, the “Prime Rate” as published by the Wall Street Journal for such day or, if the Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonable determined by the Administrative Agent); each change in the Prime Rate shall be effective on the date that such change is effective. The Prime Rate is not necessarily the lowest rate charged by any financial institution to its customers.

“Pro Forma Adjustment” means, for any Test Period with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of Holdings, the pro forma increase in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any applicable acquisition (including the Transactions), Specified Transactions, dispositions, operational change or initiative as a result of actions taken or expected to be taken or a plan for realization shall have been established, for the purposes of realizing cost savings, operating expense reductions or other operating improvements and synergies; provided that (A) such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reduction, other operating improvements and synergies (on a “run rate” basis) had been realized on the first day of such period and, for purposes of projecting such pro forma increase to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and “run rate” synergies had been realized commencing on the first day of such period and that such cost savings, operating expense reductions, other operating improvements and synergies were realized on a “run rate” basis during the entirety of such Test Period, in each case, net of the amount of actual benefits realized from such actions, (B) any Pro Forma Adjustment to Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate and (C) any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings, operating expense reductions, other operating improvements and synergies or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period and shall be subject to the 25% cap in clause (b) of the definition of Consolidated EBITDA as provided therein.

“Pro Forma Basis”, “Pro Forma Compliance” and “Pro Forma Effect” mean, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis or after giving Pro Forma Effect thereto, that (a) to the extent applicable, the Pro Forma Adjustment and the Pro Forma Disposal Adjustment shall have been made and (b) the Transactions, all Specified Transactions, operational changes or initiatives described in the definition of “Pro Forma Adjustment” or “Consolidated EBITDA” and the following transactions in connection therewith that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made shall be deemed to have occurred as of the first day of the applicable period of measurement in such test, financial ratio or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Transaction, Specified Transaction, operational change or initiative (A) in the case of a Disposition of all or substantially all Equity Interests in any subsidiary of Holdings or any division, product line, or facility used for operations of Holdings, the Borrower or any of their respective Subsidiaries, shall be excluded and (B) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction”, shall be included, (ii) any retirement of Indebtedness, and (iii) any Indebtedness incurred or assumed by Holdings, the Borrower or any of their respective Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination and interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to operating expense reductions that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on Holdings, the Borrower or any of their respective Subsidiaries, and (z) factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

“Pro Forma Disposal Adjustment” means, for any Test Period with respect to any Sold Entity or Business, the pro forma increase or decrease in Consolidated EBITDA projected by the Borrower in good faith to be realizable within eighteen (18) months following the date the applicable Person, property, business, line of business, division, business unit or asset becomes a Sold Entity or Business as a result of contractual arrangements between the Borrower or any Restricted Subsidiary entered into with such Sold Entity or Business at the time of its disposal which represent an increase or decrease in Consolidated EBITDA which is incremental to the Disposed EBITDA of such Sold Entity or Business for the most recent Test Period prior to its disposal. Any such pro forma increase or decrease in Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate.

“Pro Forma Entity” has the meaning given to such term in the definition of “Acquired EBITDA”.

“Pro Forma Financial Statements” means the unaudited consolidated pro forma balance sheet of Holdings and its Subsidiaries as of March 31, 2017, and the related unaudited



pro forma consolidated statement of income of Holdings and its Subsidiaries as of and for the twelve-month period then ended, prepared after giving effect to the Transactions (and which may exclude, at the Borrower's option, the impact of purchase accounting effects required by GAAP) as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) and any other adjustments as agreed by the Sponsor and the Joint Lead Arrangers (which need not be prepared in compliance with Regulations S-X of the Securities Act of 1933, as amended, or (at the option of the Borrower) include adjustments for purchase accounting).

"Proposed Change" has the meaning assigned to such term in Section 9.02(c).

"Public Lender" has the meaning assigned to such term in Section 5.01.

"Qualified Equity Interests" means Equity Interests of Holdings or the Borrower other than Disqualified Equity Interests.

"Qualified Securitization Facility" means any Securitization Facility that meets the following conditions: (a) the board of directors of the Borrower shall 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 Securitization Subsidiary and (b) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower).

"Qualifying Lender" has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

"Qualified Reporting Subsidiary" means any wholly-owned Restricted Subsidiary of Holdings that, together with its consolidated Restricted Subsidiaries, constitutes substantially all of the assets of Holdings and its consolidated Subsidiaries.

"RBC Capital Markets" means the investment banking businesses of Royal Bank of Canada and its affiliates.

"Refinanced Debt" has the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness".

"Refinancing Amendment" means an amendment to this Agreement in form reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower and Holdings, (b) the Administrative Agent and (c) each applicable Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.21.

"Register" has the meaning assigned to such term in Section 9.04(b)(iv).

"Registered Equivalent Notes" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Reimbursement Date” has the meaning assigned to such term in Section 2.05(f).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, controlling persons, trustees, administrators, managers, advisors and representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns of each of the foregoing.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building, or any occupied structure or facility.

“Removal Effective Date” has the meaning assigned to such term in Section 8.06.

“Repricing Transaction” means (a) the incurrence by the Borrower or any Loan Guarantor of any Indebtedness in the form of term debt financing (i) having an Effective Yield that is less than the Effective Yield for the Initial Term Loans and (ii) the proceeds of which are substantially concurrently used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, outstanding principal of Initial Term Loans or (b) any amendment to this Agreement with respect to the Initial Term Loans that results in an effective reduction in the Effective Yield for the Initial Term Loans, except, in each case, in connection with (1) any event that is not consummated for the primary purpose of lowering the Effective Yield for the Term Facility and (2) (A) a Change in Control, (B) an Acquisition Transaction or (C) an IPO. Any determination by the Administrative Agent with respect to whether a Repricing Transaction shall have occurred shall be made in the reasonable judgment of the Administrative Agent consistent with generally accepted financial practices and shall be conclusive and binding on all Lenders holding the Initial Term Loans.

“Required Additional Debt Terms” means with respect to any Indebtedness, (a) such Indebtedness does not mature earlier than the Latest Maturity Date for the Initial Term Loans (except in the case of customary bridge loans which subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature earlier than the Latest Maturity Date for the Initial Term Loans), (b) such Indebtedness does not have a shorter Weighted Average Life to Maturity than the Initial Term Loans, (c) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Initial Term Loans, such Indebtedness does not have scheduled amortization or mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments”, offers upon an event of default or, in the case of junior lien secured debt, excess cash flow payments (subject to the prior prepayment of the Loan Document Obligations or the prior offer thereof to prepay the Loan Document Obligations that constitute Senior Secured First Lien Indebtedness)) that could result in redemptions of such Indebtedness prior to the Latest Maturity Date, (d) such Indebtedness is not guaranteed by any entity that is not a Loan Party, (e) such Indebtedness that is secured (i) is not secured by any assets not securing the Secured Obligations and (ii) is subject to the relevant Intercreditor Agreement, (f) the terms and conditions of such Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) are not

materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness than the terms and conditions of this Agreement (when taken as a whole) are to the Lenders (unless (x) such terms and conditions are applicable only to periods after the Latest Maturity Date at such time, (y) the Lenders also receive the benefit of such more favorable terms and conditions or (z) such terms are reasonably satisfactory to the Administrative Agent) (together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial covenant) (it being understood that, to the extent that any covenant, event of default, guarantee or other provision is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of any such Indebtedness in connection therewith or (ii) only applicable after the Latest Maturity Date at such time); provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination and (g) if such Indebtedness is secured on a pari passu basis with the Initial Term Loans and ranks pari passu with the Initial Term Loans in right of payment (a “Loan Equivalent”) and such Loan Equivalent is incurred prior to the first anniversary of the Effective Date, in the event that the Effective Yield for any such Loan Equivalent is greater than the Effective Yield for the Initial Term Loans by more than 0.50% per annum, then the Effective Yield for the Initial Term Loans shall be increased (without the requirement for any Lender consent) to the extent necessary so that the Effective Yield for the Initial Term Loans is equal to the Effective Yield for such Loan Equivalent minus 0.50% per annum; provided that if such Loan Equivalent includes an interest rate floor greater than the applicable interest rate floor under the Initial Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the interest rate margin under the Initial Term Loans shall be required, but only to the extent an increase in the interest rate floor in the Initial Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the Initial Term Loans shall be increased to the extent of such differential between interest rate floors.

“Required Lenders” means, at any time, Lenders having Revolving Exposures, Term Loans and unused Commitments representing more than 50% of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at such time; provided that to the extent set forth in Section 9.02 or Section 9.04 whenever there are one or more Defaulting Lenders, the total outstanding Term Loans and Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further, that, with respect to any determination of Required Lenders, Affiliated Debt Funds cannot, in the aggregate, account for more than 49.9% of the amounts included in such determination as provided in Section 9.04(f)(ii); provided, further, that, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“Required Revolving Lenders” means, at any time, Revolving Lenders having Revolving Exposures and unused Commitments representing more than 50.0% of the aggregate Revolving Exposures and unused Commitments at such time; provided that to the extent set forth in Section 9.02 or Section 9.04 whenever there are one or more Defaulting Lenders, the total outstanding Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender, shall be excluded for purposes of making a determination of Required Revolving Lenders; provided, further, that, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, statutory instruments, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Resignation Effective Date” has the meaning assigned to such term in Section 8.06.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, director, company secretary or other similar officer, manager or a member of the Board of Directors of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any authorized signatory, director, manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a)(i) of the definition of the term “Collateral and Guarantee Requirement”, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests in Holdings, the Borrower or any Restricted Subsidiary.

“Restricted Prepayment Event” has the meaning assigned to such term in Section 2.11(g).

“Restricted Subsidiary” means, unless otherwise specified, any Subsidiary of Holdings, other than an Unrestricted Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.11(e).

“Revaluation Date” means (a) with respect to any Alternative Currency Loan, each of the following: (i) each date of a Eurodollar Borrowing of such Alternative Currency Loan and (ii) each date of a continuation of such Alternative Currency Loan pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent and the Borrower shall reasonably determine; and (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) each date of issuance of such Letter of Credit, (ii) each date of an amendment of such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing Bank under such Letter of Credit, and (iv) such additional dates as the Administrative Agent and the Borrower shall reasonably determine.

“Revolving Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

“Revolving Commitment” means, with respect to each Lender, its obligation to (i) make Revolving Loans, (ii) acquire participations in Swing Line Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Exposure hereunder and (iii) acquire participations in Letters of Credit in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender’s name in Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 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) a Refinancing Amendment, (iii) an Incremental Revolving Commitment Increase or (iv) a Loan Modification Agreement. The initial amount of each Lender’s Revolving Commitment is set forth on Schedule 2.01 or, in each case, in the Assignment and Assumption, Loan Modification Agreement, Incremental Facility Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. As of the Effective Date, the initial aggregate amount of the Lenders’ Revolving Commitments is \$50,000,000.

“Revolving Exposure” means, with respect to any Revolving Lender at any time, the sum of the outstanding principal amount of such Revolving Lender’s Revolving Loans, its LC Exposure and its Swing Line Obligations at such time.

“Revolving Lender” means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” mean a Loan made by a Revolving Lender pursuant to Section 2.01.

“Revolving Maturity Date” means (i) June 30, 2022 (or if such day is not a Business Day, the immediately preceding Business Day) or (ii) with respect to any Revolving Lender that has extended its Revolving Commitment pursuant to a Permitted Amendment and with respect to the Swing Line Lender and any Issuing Bank that has consented to such extension, the extended maturity date set forth in any such Loan Modification Agreement.

“S&P” means S&P Global Ratings, and any successor thereto.

“Sanctioned Country” means, at any time, a country or territory which is the target of any comprehensive Sanctions (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctions” means any economic sanctions administered or enforced by the United States Government (including without limitation, OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury or other relevant sanctions authority (“Sanctions Authorities”).

“Sanctions Authorities” has the meaning assigned to such term in the definition of “Sanctions”.

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

“Second Lien Administrative Agent” has the meaning assigned to such term in the definition of “Second Lien Credit Agreement”.

“Second Lien Credit Agreement” means the Second Lien Credit Agreement, dated as of the Effective Date (as amended, restated, supplemented, extended, increased, renewed, refunded, replaced, restructured or refinanced or otherwise modified, in each case to the extent not prohibited by the Closing Date Intercreditor Agreement), among the Borrower, Holdings, Crescent Mezzanine Partners VII, L.P., and U.S. Bank, National Association as administrative agent (the “Second Lien Administrative Agent”) and collateral agent and the other lenders and financial institutions party thereto.

“Second Lien Loan Documents” means the Second Lien Credit Agreement and all security agreements, guarantees, pledge agreements, notes and other agreements or instruments executed in connection therewith, including all “Loan Documents” (or any comparable term) (as defined in the Second Lien Credit Agreement).

“Second Lien Permitted Incremental Equivalent Debt” means the “Incremental Equivalent Debt” as defined in the Second Lien Credit Agreement (as in effect on the Effective Date).

“Second Lien Term Loans” means the “Term Loans” as defined in the Second Lien Credit Agreement.

“Secured Cash Management Obligations” means the due and punctual payment and performance of all obligations of Holdings, the Borrower and any Restricted Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds (collectively, “Cash Management”).

Services”) provided to Holdings, the Borrower or any Restricted Subsidiary (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Administrative Agent or any of its Affiliates, (b) owed on the Effective Date to a Person that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) owed to a Person that is an Agent, a Lender or an Affiliate of an Agent or Lender at the time such obligations are incurred, for which such Loan Party agrees to provide security and in each case that has been designated to the Administrative Agent in writing by the Borrower as being a “Secured Cash Management Obligations” for purposes of the Loan Documents; it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article VIII, Section 9.03 and Section 9.09 and the Closing Date Intercreditor Agreement as if it were a Lender.

“Secured Obligations” means (a) the Loan Document Obligations, (b) the Secured Cash Management Obligations and (c) the Secured Swap Obligations (excluding with respect to any Loan Guarantor, Excluded Swap Obligations of such Loan Guarantor).

“Secured Parties” means (a) each Lender, (b) each Issuing Bank, (c) the Administrative Agent (and each co-agent or sub-agent appointed by the Administrative Agent pursuant to Section 8.05), (d) the Collateral Agent, (e) each Joint Lead Arranger, (f) each Person to whom any Secured Cash Management Obligations are owed, (g) each counterparty to any Swap Agreement the obligations under which constitute Secured Swap Obligations, (h) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, (i) the Swing Line Lender and (j) the permitted successors and assigns of each of the foregoing.

“Secured Swap Obligations” means the due and punctual payment and performance of all obligations of Holdings and its Restricted Subsidiaries under each Swap Agreement that (a) is with a counterparty that is the Administrative Agent or any of its Affiliates, (b) is in effect on the Effective Date with a counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent as of the Effective Date or (c) is entered into after the Effective Date with any counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Swap Agreement is entered into, for which such Loan Party agrees to provide security.

“Securitization Assets” means the accounts receivable, royalty and other similar rights to payment and any other assets related thereto subject to a Qualified Securitization Facility that are customarily sold or pledged in connection with securitization transactions and the proceeds thereof.

“Securitization Facility” means any of one or more receivables securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties and indemnities made in connection with such facilities) to Holdings, the Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary) pursuant to which Holdings, the Borrower or any Restricted Subsidiary sells or grants a security interest in its accounts receivable or assets related thereto that are customarily sold or pledged in connection with securitization transactions to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“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 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 Documents” means the Collateral Agreement, the Mortgages and each other security agreement or pledge agreement executed and delivered pursuant to the Collateral and Guarantee Requirement, Sections 5.11, 5.12 or 5.14 to secure any of the Secured Obligations.

“Senior Representative” means, with respect to any series of Indebtedness permitted by this Agreement to be secured on the Collateral on a pari passu or junior basis, the trustee, administrative agent, collateral agent, security agent or similar agent 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.

“Senior Secured First Lien Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries other than the Second Lien Term Loans and any other such Indebtedness to the extent secured on a junior basis to the Liens granted under the Security Documents in favor of the Collateral Agent for the benefit of the Secured Parties in respect of the Initial Term Loans.

“Senior Secured First Lien Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured First Lien Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Senior Secured Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries.

“Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Settlement” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“Settlement Asset” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.



“Settlement Indebtedness” means any payment or reimbursement obligation in respect of a Settlement Payment.

“Settlement Lien” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“Settlement Payment” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“Settlement Receivable” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“Sold Entity or Business” has the meaning assigned to such term in the definition of the term “Consolidated EBITDA”.

“Solicited Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Solicited Discounted Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Solicited Discounted Prepayment Notice” means an irrevocable written notice of a Borrower Solicitation of Discounted Prepayment Offers made pursuant to Section 2.11(a)(iii)(D), substantially in the form of Exhibit K.

“Solicited Discounted Prepayment Offer” means the irrevocable written offer by each Term Lender, substantially in the form of Exhibit L, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“Solicited Discounted Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Specified Acquisition Agreement Representations” means the representations in the Acquisition Agreement made with respect to the Company that are material to the interests of the Lenders, but only to the extent that Holdings, the Borrower or any Affiliate thereof has the right (determined without regard to any notice requirement) to terminate its obligations under the Acquisition Agreement, or the right to decline to consummate the Acquisition, as a result of a breach of such representations in the Acquisition Agreement.

“Specified Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Notice” means an irrevocable written notice of the Borrower of Specified Discount Prepayment made pursuant to Section 2.11(a)(iii)(B) substantially in the form of Exhibit G.

“Specified Discount Prepayment Response” means the irrevocable written response by each Term Lender, substantially in the form of Exhibit H, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(3).

“Specified Event of Default” means an Event of Default under Section 7.01(a), (b), (h) or (i).

“Specified Representations” means those representations and warranties of the Borrower and Holdings and of the other Guarantors (solely with respect to the Subsidiary Guarantee) set forth in Sections 3.01(a) (with respect to organization and existence) and (b) (with respect to due authorization, execution, delivery and performance of the Loan Documents), 3.02 (with respect to due authorization, execution, delivery and validity and enforceability of the Loan Documents), 3.03(b)(i) (with respect to entering into and performance of the Loan Documents), 3.08, 3.14, 3.15, 3.16(a), use of proceeds not violating 3.16(b) or 3.16(c), and 3.17.

“Specified Transaction” means any Investment, acquisition (including the commitment of activities constituting such business), sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, the termination or discontinuation of activities constituting any business, commencement of a New Project or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis after giving Pro Forma Effect thereto.

“Sponsor” means each of GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP and in each case, each of their respective associated funds and each of their respective Affiliates (other than any portfolio companies of any of the foregoing).

“Sponsor Model” means the Sponsor model delivered to the Joint Lead Arrangers on May 16, 2017.

“Starter Basket” has the meaning assigned to such term in the definition of “Available Amount”.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate

of the maximum reserve, liquid asset or similar percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by any Governmental Authority to be applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities. Such reserve, liquid asset or similar percentages shall include those imposed pursuant to Regulation D of the Board of Governors. Eurodollar Loans shall be deemed to be subject to such reserve, liquid asset or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any other Requirements of Law. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Submitted Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Submitted Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“subsidiary” means, with respect to any Person (the “parent”) at any date (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more subsidiaries of such Person owns more than a 50% equity interest at the time.

“Subsidiary” means any direct or indirect subsidiary of Holdings (unless otherwise specified).

“Subsidiary Loan Party” means each Restricted Subsidiary of Holdings (other than the Borrower) that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Swap 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.

“Swap Obligations” means, with respect to any Person, the obligations of such Person under any Swap Agreement.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Facility” means the swing line loan facility made available by the Swing Line Lenders pursuant to Section 2.04.

“Swing Line Lender” means Barclays Bank PLC, in its capacity as a lender of Swing Line Loans hereunder, or any successor lender of Swing Line Loans hereunder.

“Swing Line Loan” means any Loan made pursuant to Section 2.04.

“Swing Line Loan Notice” means a written notice of a Swing Line Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit C-3 hereto.

“Swing Line Obligations” means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding. The Swing Line Obligations of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Swing Line Obligations at such time.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the aggregate amount of the Revolving Commitments. The Swing Line Sublimit is part of, and not in addition to, the Revolving Commitments.

“Target Person” has the meaning assigned to such term in Section 6.04.

“Tax Distributions” has the meaning assigned to such term in Section 6.07(a)(vii)(A).

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

“Term Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder. The amount of each Lender’s Term Commitment as of the Effective Date is set forth on Schedule 2.01. As of the Effective Date, the total Term Commitment is \$525,000,000.

“Term Lender” means a Lender with a Term Commitment or an outstanding Term Loan.

“Term Loans” means Initial Term Loans, Other Term Loans and Incremental Term Loans, as the context requires.

“Term Maturity Date” means June 30, 2024 (or, with respect to any Term Lender that has extended the maturity date of its Term Loans in accordance with the terms of this Agreement, the extended maturity date set forth in the applicable Loan Modification Agreement, Refinancing Amendment or other amendment hereto).

“Termination Date” means the date on which all Commitments have expired or been terminated, all Secured Obligations have been paid in full in cash (other than (x) Secured Swap Obligations not yet due and payable, (y) Secured Cash Management Obligations not yet due and payable and (z) contingent obligations not yet accrued and payable) and all Letters of Credit have expired or been terminated (other than Letters of Credit that have been cash collateralized or backstopped by an institution and otherwise pursuant to arrangements reasonably satisfactory to the applicable Issuing Bank).

“Test Period” means, at any date of determination, the period of four consecutive fiscal quarters of Holdings then last ended as of such time for which financial statements have been delivered pursuant to Section 5.01(a) or (b) or, at the option of the Borrower, in connection with a Limited Condition Transaction, the period of four consecutive fiscal quarters of Holdings for which financial statements have been delivered to the Administrative Agent on or prior to the applicable LCT Test Date; provided that for any date of determination before the delivery of the first financial statements pursuant to Section 5.01(a) or (b), the Test Period shall be the period of four consecutive fiscal quarters of Holdings ended as of March 31, 2017.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Total Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Trademarks” has the meaning assigned to such term in the Collateral Agreement.

“Transaction” means the each of the following transactions consummated or to be consummated in connection therewith:

(a) the contribution (the “Equity Contribution”) of cash by the Investors to one or more Holdings Parents in an aggregate amount that, when taken together with the aggregate amount of all equity rolled over, issued directly or indirectly to, or otherwise directly or indirectly acquired, by any existing shareholders, board members and/or management of the Company (collectively, the “Other Equity”), is not less than 35% of the sum of (i) the aggregate principal amount of the Senior Credit Facilities funded on the Effective Date and (ii) the Equity Contribution and the Other Equity, provided that the Sponsor shall directly or indirectly own at least 50.1% of the voting equity interests of Holdings immediately following the consummation of the Transactions;

(b) the Acquisition and the Merger (as defined in the Acquisition Agreement), if applicable, the other transactions described in the Acquisition Documents or related thereto;

(c) the execution and delivery of Loan Documents to be entered into on the Effective Date and the funding of the Initial Term Loans on the Effective Date;

(d) the execution and delivery of Second Lien Loan Documents to be entered into on the Effective Date and the funding of the Second Lien Term Loans on the Effective Date;

(e) the refinancing or repayment of all existing third party Indebtedness for borrowed money of the Company and its subsidiaries under the Existing Credit Agreements and the termination of all commitments, Guarantees and security interests in respect thereof (the “Refinancing”); and

(f) the payment of the Transaction Costs.

“Transaction Costs” means all fees, premiums, original issue discount, costs and expenses incurred or payable by Holdings, the Borrower or any other Subsidiary in connection with the Transactions, including fees, costs and expenses of any counsel, consultants and other advisors.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or Alternate Base Rate.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” and “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UCP” means the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce, in its Publication No. 600 (or such later version thereof as may be reasonably acceptable to the applicable Issuing Bank and in effect at the time of issuance of such Letter of Credit). On an exception basis and if specifically requested by the Borrower, a Letter of Credit may be issued subject to UCP.

“Unaudited Financial Statements” means unaudited consolidated balance sheets and the related consolidated statements of comprehensive income and cash flows of the Company and its Subsidiaries for the fiscal quarter ended March 31, 2017.

“Unfunded Pension Liability” of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

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

“United States Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(C).

“Unrestricted Subsidiary” means any Subsidiary designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.13 subsequent to the Effective Date.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“Vista” means Vista Equity Partners Management, LLC and its associated funds and each of their respective Affiliates, including Vista Equity Partners Fund IV, L.P. and Vista Equity Partners Fund V, L.P. (other than any portfolio companies of any of the foregoing).

“Voluntary Prepayment Amount” has the meaning set forth in the definition of “Incremental Cap”.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness, in each case, without giving effect to any reductions of amortization or other scheduled payments for periods where amortization has been reduced as a result of the prepayment of the applicable Indebtedness.

“Wholly Owned Restricted Subsidiary” means any Restricted Subsidiary that is a Wholly Owned Subsidiary.

“Wholly Owned Subsidiary” means, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of the preceding clauses (i) and (ii), director’s qualifying shares and/or other nominal amount of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

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

“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.

## SECTION 1.02 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan” or “ABR Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing” or “Term Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”). Borrowings of Revolving Loans are sometimes referred to herein as “Revolving Borrowings”.

## SECTION 1.03 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference to any Organizational Document, agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such Organizational Document, agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or other modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any Requirement of Law or any law, statute, treaty, rule, guideline, regulation, ordinance or code, shall, unless otherwise specified, refer to such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code as amended, modified or supplemented from time to time and shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, interpreting or administering such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code.

## SECTION 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise prescribed herein.

(b) Notwithstanding anything in this Agreement to the contrary, for purposes of determining compliance with any test contained in this Agreement, the Total Net Leverage



Ratio, the Senior Secured First Lien Net Leverage Ratio and the Senior Secured Net Leverage Ratio shall be calculated on a Pro Forma Basis to give effect to the Transaction and all Specified Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made.

#### SECTION 1.05 Effectuation of Transactions.

All references herein to Holdings, the Borrower and their respective Subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of Holdings, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

#### SECTION 1.06 Limited Condition Transactions.

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, when calculating any applicable ratio, the amount or availability of the Available Amount or any other basket (including incremental facilities or any baskets based on Consolidated EBITDA or total assets), designating Unrestricted Subsidiaries or determining other compliance with this Agreement (including the determination of compliance with representations, warranties or any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Limited Condition Transaction, the date of determination of such ratio, the amount or availability of the Available Amount or any other basket and determination of the accuracy of any representation or warranty or whether a Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant or provision shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), be deemed to be (i) with respect to debt prepayments, the time of delivery of irrevocable notice with respect to such prepayment, (ii) with respect to Restricted Payments, the time of the declaration of such Restricted Payments and (iii) with respect to all other Limited Condition Transactions, the date the definitive agreements for such Limited Condition Transaction are entered into (the applicable date in clauses (i), (ii) or (iii), the "LCT Test Date") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Transaction or other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable Test Period ending prior to the LCT Test Date or on the LCT Test Date, as applicable, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower and its Subsidiaries) at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Transaction or other related transactions. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other

transaction on or 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 for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

#### SECTION 1.07 Currency Equivalents Generally.

For purposes of determining compliance as of any date with any covenant or incurrence test (other than Section 6.11 and the calculation of compliance with any financial ratio for purposes of taking action hereunder) under any Loan Document or for purposes of making any determination under any Default or Event of Default hereunder or for any other specified purpose hereunder, amounts incurred or outstanding in currencies (other than Dollars) shall be translated into Dollars at the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency (the “Exchange Rate”), as in effect at 11:00 a.m. (London time) on the date of such Specified Transaction; provided that, if any Indebtedness or Liens are incurred to extend, replace, refund, refinance, renew or defease other Indebtedness or Liens denominated in currencies (other than Dollars) and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding, refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness). No Default or Event of Default shall arise as a result of changes in currency exchange rates occurring after the time any Specified Transaction has been consummated so long as such Specified Transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth above. For purposes of Section 6.11 and the calculation of compliance with any financial ratio for purposes of taking any action hereunder (including for purposes of calculating compliance with the Incremental Cap), on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 4.01(h)), as applicable, for the relevant Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Swap Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness. Any determinations as to the Dollar Equivalent of Revolving Loans or Letters of Credit denominated in an Alternative Currency, the amount of fees owing in respect of Letters of Credit denominated in an Alternative Currency and the amount of the LC Disbursement reimbursement owing to each Issuing Bank under Section 2.05(f)

shall be made by the Administrative Agent as of the most recent Revaluation Date and such determination shall be conclusive absent manifest error. The Administrative Agent or any Issuing Bank, as applicable, shall use the Exchange Rate as of each Revaluation Date for the purpose of calculating Dollar Equivalent amounts of the Revolving Loans denominated in an Alternative Currency. Such Exchange Rates shall become effective as of such Revaluation Date and shall be the Exchange Rates employed in converting any amounts between the applicable currencies for such purposes until the next Revaluation Date to occur.

SECTION 1.08 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 1.09 Timing of Payment or Performance.

Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

SECTION 1.10 Certifications.

All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

SECTION 1.11 Compliance with Certain Sections.

Without limiting the reclassification rights described in any Section of Article VI, for purposes of determining compliance with Article VI (other than Section 6.11), in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Affiliate transaction, restrictive agreement, or prepayment of Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions of the same covenant then permitted pursuant to any clause or subsection of such Article VI (other than Sections 6.01(a)(i), 6.01(a)(xx), 6.02(i) and 6.02(xix)), such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses at the time of such transaction or any later time from time to time, in each case, as determined by the Borrower in its sole discretion at such time and thereafter may be reclassified by the Borrower in any manner not expressly prohibited by this Agreement. If any of the baskets set forth in this Agreement are exceeded solely as a result of fluctuations to Consolidated EBITDA for the most recently completed fiscal quarter after the last time such baskets were calculated for any purpose under this Agreement, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations. Each direct or indirect Subsidiary of Holdings that is required to be joined and is joined as a Loan Party pursuant to Section 5.11 shall, until the completion of such joinder, be deemed for the purposes of Article VI of this Agreement to be a Loan Party from and after the Effective Date (or, if later, the date of formation or acquisition of such subsidiary).

THE CREDITS

SECTION 2.01 Commitments.

Subject to the terms and conditions set forth herein, (a) each Term Lender severally, and not jointly, agrees to make Term Loans to the Borrower on the Effective Date denominated in Dollars in a principal amount not exceeding such Term Lender's Term Commitment and (b) each Revolving Lender agrees to make Revolving Loans of the applicable Class to the Borrower denominated in Dollars or an Alternative Currency, from time to time during the Revolving Availability Period in an aggregate principal amount which will not result in such Revolving Lender's Revolving Exposure of such Class exceeding such Revolving Lender's Revolving Commitment of such Class (provided, that Revolving Loans funded on the Effective Date shall not exceed \$20,000,000 in the aggregate). Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed (it being understood, however, that prepayments will be taken into account for purposes of the Voluntary Prepayment Amount to the extent provided by Section 2.20).

SECTION 2.02 Loans and Borrowings.

(a) Each (i) Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class and (ii) Revolving Loans shall be made by the Revolving Lenders ratably in accordance with their respective Revolving Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.14, each Revolving Borrowing and Term Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as ABR Borrowings unless the Borrower shall have given the notice required for a Eurodollar Borrowing under Section 2.03 and, to the extent requested by the Administrative Agent, provided an indemnity letter extending the benefits of Section 2.16 to Lenders in respect of such Borrowings. Revolving Loans may be ABR Loans or Eurodollar Loans. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the

Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurodollar Borrowing that results from a continuation of one or more outstanding Eurodollar Borrowings may be in an aggregate amount that is equal to such outstanding Borrowings. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of eight Eurodollar Borrowings outstanding *plus* an additional two Eurodollar Borrowings for each outstanding Incremental Facility. Notwithstanding anything to the contrary herein, a Revolving Borrowing of the applicable Class may be in an aggregate amount equal to the entire unused balance of the aggregate Revolving Commitments of such Class or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(f).

#### SECTION 2.03 Requests for Borrowings.

To request a Revolving Borrowing or Term Borrowing, the Borrower shall notify the Administrative Agent of such request by email or facsimile to the Administrative Agent of a written Borrowing Request signed by the Borrower substantially in the form of Exhibit C-1 (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing (or, in the case of any Eurodollar Borrowing to be made on the Effective Date, the same Business Day) or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day prior to the date of the proposed Borrowing, or, in each case, such later time as is acceptable to the Administrative Agent. Each such written Borrowing Request shall specify the following information:

- (i) whether the requested Borrowing is to be a Revolving Borrowing or a Term Borrowing (specifying the Class thereof);
- (ii) the aggregate amount of such Borrowing and, in the case of Revolving Borrowings, the currency of such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the Borrower's account or accounts to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified as to any requested Borrowing in Dollars, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. If no currency for a Revolving Borrowing is specified, the requested Borrowing shall be in Dollars. Promptly following receipt of a Borrowing

Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

#### SECTION 2.04 Swing Line Loans

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans in Dollars to the Borrower (each such loan, a "Swing Line Loan"), from time to time on any Business Day during the Revolving Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage or other applicable share provided for under this Agreement of the Outstanding Amount of Revolving Loans and LC Exposure of the Revolving Lender acting as Swing Line Lender, may exceed the amount of such Swing Line Lender's Revolving Commitment; *provided* that, after giving effect to any Swing Line Loan, (i) the aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitment, then in effect and (ii) the aggregate principal amount of all Swing Line Loans outstanding shall not exceed the Swing Line Sublimit; *provided, further*, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.11, and re-borrow under this Section 2.04 without premium or penalty. Each Swing Line Loan shall be an ABR Loan. Immediately upon the making of a Swing Line Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Lender's Applicable Percentage or other applicable share provided for under this Agreement times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's delivery to the relevant Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 p.m. on the requested borrowing date (or such later time as is acceptable to the Administrative Agent) and shall specify (i) the amount to be borrowed, which shall be a minimum of \$250,000 (and any amount in excess of \$250,000 shall be an integral multiple of \$100,000) and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, Swing Line Lender will confirm with the Administrative Agent in writing that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent in writing of the contents thereof. Unless the Swing Line Lender has received a written notice from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied or waived, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 5:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this

Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Revolving Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's Defaulting Lender Fronting Exposure (solely after giving effect to Section 2.22(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by cash collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Applicable Percentage of the outstanding Swing Line Loans.

(c) *Refinancing of Swing Line Loans.* (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Lender make a ABR Loan in an amount equal to such Revolving Lender's Applicable Percentage or other applicable share provided for under this Agreement of the aggregate principal amount of Swing Line Loans of the Borrower then outstanding. Such request shall be made in writing and delivered prior to 11:00 a.m. on the date of the proposed refinancing to the Administrative Agent and Revolving Lenders (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of ABR Loans, but subject to the unutilized portion of the aggregate Revolving Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Borrowing Request promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage or other applicable share provided for under this Agreement of the amount specified in such Borrowing Request available to the Administrative Agent in same day funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Borrowing Request, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a ABR Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c) (i), the request for ABR Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by the Revolving Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in

effect. A certificate of the Swing Line Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Borrowing Request). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay the applicable Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations.* (i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Lender its Applicable Percentage or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 9.08 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Lender shall pay to the Swing Line Lender its Applicable Percentage or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(e) *Interest for Account of Swing Line Lender.* The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Lender funds its ABR Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.



## SECTION 2.05 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein (including Section 2.22), each Issuing Bank agrees, in reliance upon the agreements of the Revolving Lenders and the Borrower set forth in this Section 2.05 and elsewhere in the Loan Documents, to issue Letters of Credit denominated in Dollars or any Alternative Currency for the Borrower's own account (or for the account of any Subsidiary so long as the Borrower is an obligor in respect of all Loan Document Obligations arising under or in respect of such Letter of Credit), in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, which shall reflect the standard operating procedures of such Issuing Bank, at any time and from time to time during the period from the Effective Date until the date that is the fifth (5th) Business Day prior to the Revolving Maturity Date; provided that (x) no Issuing Bank shall be required to issue any trade or commercial letters of credit hereunder and (y) no Issuing Bank shall be required to issue any Letter of Credit if after giving effect thereto the LC Exposure with respect to all Letters of Credit issued by such Issuing Bank would exceed the amount set forth across from its name on Schedule 2.05 (or in the documents pursuant to which such Issuing Bank became an Issuing Bank). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Issuance, Amendment, Renewal or Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall deliver in writing by facsimile, or transmit by electronic communication, to the applicable Issuing Bank and the Administrative Agent (by 12:00 p.m. at least three (3) Business Days before the requested date of issuance, amendment, renewal or extension (or, in the case of any such request to be made on the Effective Date, one (1) Business Day) or such shorter period as the applicable Issuing Bank and the Administrative Agent may agree) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment, renewal or extension, as the case may be (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (d) of this Section 2.05), the amount and currency of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend, as the case may be, such Letter of Credit. Each such notice shall be in the form of Exhibit Q, appropriately completed (each, a "Letter of Credit Request"). If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment, renewal or extension of any Letter of Credit the Borrower shall be deemed to, with respect to clauses (ii) and (iii), represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) subject to Section 9.04(b)(ii), the Applicable Fronting Exposure of each Issuing Bank shall not exceed its Fronting Exposure Cap, (ii) the aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitments then in effect and (iii) the aggregate LC Exposure shall not exceed the Letter of Credit Sublimit. Letters of Credit will be available to be issued up to an aggregate face amount not to exceed the Letter of Credit Sublimit. No Issuing Bank shall be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Authority or arbitrator shall enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any Requirements of 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 the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise fully compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank now or hereafter in effect and applicable to letters of credit generally, (iii) [reserved], (iv) except as otherwise agreed by the Administrative Agent and such Issuing Bank, the Letter of Credit is in an initial stated amount less than \$100,000, or (v) any Lender is at that time a Defaulting Lender, if after giving effect to Section 2.22(a)(iv), any Defaulting Lender Fronting Exposure remains outstanding, unless such Issuing Bank has entered into arrangements, including the delivery of cash collateral, reasonably satisfactory to such Issuing Bank with the Borrower or such Lender to eliminate such Issuing Bank's Defaulting Lender Fronting Exposure arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other LC Exposure as to which such Issuing Bank has Defaulting Lender Fronting Exposure. No Issuing Bank shall be under any obligation (i) to amend or extend any Letter of Credit if (x) 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 (y) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit or (ii) to issue any Letter of Credit if such Letter of Credit contains any provisions for automatic reinstatement of all or any portion of the stated amount thereof after any drawing thereunder or after the expiry date of such Letter of Credit (provided that any Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods as provided in Section 2.05(d)).

(c) Notice. Each Issuing Bank agrees that, upon any issuance, amendment, renewal or extension of a Letter of Credit, it shall have given to the Administrative Agent written notice thereof required under paragraph (m)(ii) of this Section 2.05.

(d) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date that is one year after the date of the issuance of such Letter of Credit (or, in the case of any extension thereof, the date to which it has been extended (not in excess of one year from the last applicable expiry date)) or such later date as agreed to by the applicable Issuing Bank in its sole discretion and (ii) the date that is five (5) Business Days prior to the Revolving Maturity Date; provided that if such expiry date is not a Business Day, such Letter of Credit shall expire at or prior to the close of business on the next succeeding Business Day; provided, further, that any Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed or extended automatically for additional consecutive periods of one year or less (but not beyond the date that is five (5) Business Days prior to the Revolving Maturity Date) unless the applicable Issuing Bank notifies the beneficiary thereof within the time period specified in such Letter of Credit or, if no such time period is specified, at least thirty (30) days prior to the then-applicable expiration date, that such Letter of Credit will not be renewed or extended; provided, further, that such Letter of Credit shall not be required to expire on such fifth (5<sup>th</sup>) Business Day prior to the Revolving Maturity Date if such Letter of Credit is cash collateralized or backstopped in an amount, by an institution and otherwise pursuant to arrangements, in each case reasonably acceptable to the applicable Issuing Bank. For the avoidance of doubt, if the Revolving Maturity Date occurs prior to the expiration of any Letter of Credit as a

result of the last proviso in the foregoing sentence, then upon the taking of actions described in such proviso with respect to such Letter of Credit, all participations in such Letter of Credit under the terminated Revolving Commitments shall terminate.

(e) Participations. Immediately upon the issuance of each Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank that is the issuer thereof or the Lenders, each Revolving Lender shall be deemed to have purchased and the applicable Issuing Bank shall be deemed to have sold a participation in such Letter of Credit equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Revolving Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (f) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower for any reason. All fundings of such participations shall be denominated in Dollars or, if applicable, the Dollar Equivalent of the relevant amount of such Letter of Credit. Each Revolving Lender acknowledges and agrees that its acquisition of participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or any reduction or termination of the Revolving Commitments, and that each payment required to be made by it under the preceding sentence shall be made without any offset, abatement, withholding or reduction whatsoever.

(f) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount (in same day funds) equal to such LC Disbursement not later than 4:00 p.m., New York City time, on the Business Day immediately following the Business Day that the Borrower receives written notice (including via e-mail) of such LC Disbursement (the "Reimbursement Date"), together with accrued interest or fees thereon in accordance with clause (i) of this Section 2.05. Anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and the applicable Issuing Bank prior to 2:00 p.m., New York City time, on the Reimbursement Date that the Borrower intends to reimburse the applicable Issuing Bank for the amount of the LC Disbursement (including any accrued interest or fees thereon) with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Borrowing Request to the Administrative Agent requesting Revolving Lenders to make Revolving Loans that are ABR Revolving Loans on the Reimbursement Date in an amount equal to such LC Disbursement (together with any accrued interest or fees thereon), and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Revolving Lenders shall, on the Reimbursement Date, make Revolving Loans that are ABR Revolving Loans in an amount equal to their Applicable Percentage of such LC Disbursement (together with any accrued interest or fees thereon), the proceeds of which shall be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for the amount of such LC Disbursement (together with any accrued interest or fees thereon); provided that if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Bank on the Reimbursement Date in an amount equal to such LC Disbursement (together with any accrued interest or fees thereon), the Borrower shall reimburse the applicable Issuing Bank, on

demand, in an amount in same day funds equal to the excess of such LC Disbursement (together with any accrued interest or fees thereon) over the aggregate amount of such Revolving Loans, if any, which are so received. The Revolving Loans made pursuant to this paragraph (f) shall be made without regard to the Borrowing Minimum.

(g) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (f) of this Section 2.05 is absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, this Agreement or any other Loan Document, or any term or provision herein or therein, (ii) any exchange, change, waiver or release of any Collateral for, or any other Person's guarantee of or other liability for, any of the Secured Obligations, (iii) the existence of any claim, set-off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the applicable Issuing Bank, any Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one or more of its Subsidiaries and the beneficiary for which any Letter of Credit was procured), (iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (v) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit (provided that the Borrower shall not be obligated to reimburse such LC Disbursements unless payment is made against presentation of a draft or other document that at least substantially complies with the terms of such Letter of Credit), (vi) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vii) any breach hereof or any other Loan Document by any party hereto or thereto, (viii) the fact that an Event of Default or a Default shall have occurred and be continuing or (ix) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. As between the Borrower and any Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by such Issuing Bank and the proceeds thereof, by the respective beneficiaries of such Letters of Credit or any assignees or transferees thereof. In furtherance and not in limitation of the foregoing, none of the Administrative Agent, the Lenders, the Issuing Banks or any of their Related Parties shall have any liability or responsibility for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged other than to confirm such documents comply with the terms of such Letter of Credit; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) its honor of any presentation under a Letter of Credit that appears on its face to substantially comply with the terms and conditions of such Letter of Credit; (v) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or

relating to any Letter of Credit (including any document required to make a drawing thereunder); (vi) errors in interpretation of technical terms; (vii) any loss or delay in the transmission of any document required in order to make a drawing under any such Letter of Credit; (viii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (ix) any consequences arising from causes beyond the control of the applicable Issuing Bank, including any act by a Governmental Authority and fluctuation in currency exchange rates. None of the above shall affect or impair, or prevent the vesting of, any of the applicable Issuing Bank's rights or powers hereunder or place any Issuing Bank under any liability to the Borrower or any other Person. Notwithstanding the foregoing, none of the above shall be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential, incidental, exemplary or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Requirements of Law) suffered by the Borrower that are caused by such Issuing Bank's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, nonappealable judgment) when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if (notwithstanding the appearance of substantial compliance) such documents are not in strict compliance with the terms of such Letter of Credit, and any such acceptance or refusal shall be deemed not to constitute gross negligence or willful misconduct.

(h) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify the Administrative Agent and the Borrower in writing delivered by facsimile of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligations to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement in accordance with paragraph (f) of this Section 2.05.

(i) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (f) of this Section 2.05, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be paid to the Administrative Agent, for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (f) of this Section 2.05 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment and shall be payable on demand or, if no demand has been made, on the date on which the Borrower reimburses the applicable LC Disbursement in full.

(j) Cash Collateralization. If (i) effective immediately, without demand or other notice of any kind, as of any expiration date of a Letter of Credit, such Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, (ii) effective immediately, without demand or other notice of any kind, as of the occurrence and during the continuance of any Event of Default under paragraph (h) or (i) of Section 7.01, or (iii) any Event of Default under paragraph (a) or (b) of Section 7.01 shall occur and be continuing, on the Business Day on which the Borrower receives notice from the Administrative Agent, the applicable Issuing Bank or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing more than 50% of the aggregate LC Exposure of all Revolving Lenders) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Secured Parties, an amount of cash in Dollars, equal to the portions of the LC Exposure attributable to Letters of Credit, as of such date plus any accrued and unpaid interest and fees thereon. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement and the other Loan Documents. At any time that there shall exist a Defaulting Lender, if any Defaulting Lender Fronting Exposure remains outstanding (after giving effect to Section 2.22(a)(iv)), then promptly upon the request of the Administrative Agent, the Swing Line Lender or any Issuing Bank, the Borrower shall deliver to the Administrative Agent cash collateral in an amount sufficient to cover such Defaulting Lender Fronting Exposure (after giving effect to any cash collateral provided by the Defaulting Lender). The Administrative Agent (for the benefit of the Secured Parties) shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent in Permitted Investments and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Notwithstanding anything to the contrary set forth in this Agreement, moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Banks for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, the balance shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing more than 50% of the aggregate LC Exposure of all the Revolving Lenders), such balance shall be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default or the existence of a Defaulting Lender, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived or after the termination of Defaulting Lender status, as applicable. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.11(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with Section 2.11(b) and no Event of Default shall have occurred and be continuing.

(k) Designation of Additional Issuing Banks. The Borrower may, at any time and from time to time, designate as additional Issuing Banks one or more Revolving Lenders that agree (in such Revolving Lender's sole discretion) in writing to serve in such capacity as provided

below. The acceptance by a Revolving Lender of an appointment as an Issuing Bank hereunder shall be evidenced by an agreement, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, executed by the Borrower, the Administrative Agent and such designated Revolving Lender and, from and after the effective date of such agreement, (i) such Revolving Lender shall have all the rights and obligations of an Issuing Bank under this Agreement and (ii) references herein to the term "Issuing Bank" shall be deemed to include such Revolving Lender in its capacity as an issuer of Letters of Credit hereunder.

(l) Resignation or Termination of an Issuing Bank. Subject to the appointment and acceptance of a successor Issuing Bank reasonably acceptable to the Borrower, any Issuing Bank may resign at any time by giving thirty (30) days' written notice to the Administrative Agent, the Lenders and the Borrower. The Borrower may terminate the appointment of any Issuing Bank as an "Issuing Bank" hereunder by providing a written notice thereof to such Issuing Bank, with a copy to the Administrative Agent. Any such termination shall become effective upon the earlier of (i) such Issuing Bank's acknowledging receipt of such notice and (ii) the fifth Business Day following the date of the delivery thereof; provided that no such termination shall become effective until and unless the LC Exposure attributable to all Letters of Credit issued by such Issuing Bank (or its Affiliates) shall have been reduced to zero. At the time any such resignation or termination shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the resigning or terminated Issuing Bank pursuant to Section 2.12(b). Notwithstanding the effectiveness of any such resignation or termination, the resigning or terminated Issuing Bank shall remain a party hereto and shall continue to have all the rights of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or termination, but shall not (a) be required (and shall be discharged from its obligations) to issue any additional Letters of Credit or extend or increase the amount of Letters of Credit then outstanding, without affecting its rights and obligations with respect to Letters of Credit previously issued by it, or (b) be deemed an Issuing Bank for any other purpose.

(m) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section 2.05, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) within five (5) Business Days following the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and face amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which a Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and amount of such LC Disbursement and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank; provided that no Issuing Bank shall have any liability hereunder to any Person for any failure to deliver the reports contemplated by this paragraph (m) of Section 2.05.

(n) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a Letter of Credit is issued or when it is amended with the consent of the beneficiary thereof the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the applicable Issuing Bank shall not be responsible to the Borrower for, and the applicable Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the applicable Issuing Bank required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the applicable law or any order of any Governmental Authority in a jurisdiction where the applicable Issuing Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade (BAFT), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

#### SECTION 2.06 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the Applicable Account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(f) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.06 and may, in reliance on such assumption and in its sole discretion, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender agrees to pay to the Administrative Agent an amount equal to such share on demand of the Administrative Agent. If such Lender does not pay such corresponding amount forthwith upon demand of the Administrative Agent therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower agrees to pay such corresponding amount to the Administrative Agent forthwith on demand. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing in accordance with Section 2.13. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.



(c) The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.03(c).

#### SECTION 2.07 Interest Elections.

(a) Each Revolving Borrowing of the applicable Class and each Term Borrowing of the applicable Class initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by facsimile or other electronic transmission of a written Interest Election Request signed by the Borrower, by the time that a Borrowing Request for Revolving Loans would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(c) Each written Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section 2.07, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing of one (1) month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing in excess of one (1) month.

#### SECTION 2.08 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Term Commitments shall automatically terminate and be permanently reduced to zero upon funding of the Term Loans on the Effective Date and (ii) the Revolving Commitments shall terminate on the Revolving Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class without premium or penalty (subject to Section 2.16), provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$500,000 and not less than \$500,000 unless such amount represents all of the remaining Commitments of such Class, (ii) the Borrower shall not terminate or reduce the Revolving Commitments of any Class if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the aggregate Revolving Exposures of such Class would exceed the aggregate Revolving Commitments then in effect for such Class, and (iii) if, after giving effect to any reduction of the Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitments, such sublimit shall be automatically reduced by the amount of such excess. Except as provided above, the amount of any such Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.08 at least one (1) Business Day prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of any credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in

which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of termination) if such condition is not satisfied. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.08. Any termination or reduction of the Commitments of any Class shall be permanent (provided, that that termination or reduction of Revolving Commitments will be taken into account for purposes of the Voluntary Prepayment Amount to the extent provided by Section 2.20). Each reduction of (x) the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class and (y) the Revolving Commitments shall be made to any Class of Revolving Commitment as directed by the Borrower (including to any Class of existing or extended Revolving Commitments).

SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date and (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10.

(b) The Borrower shall repay the aggregate principal amount of its Swing Line Loans on the Revolving Maturity Date.

(c) Each Lender shall maintain in accordance with its usual practice accounts or records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder and the amount of any the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans.

(d) The Administrative Agent shall, in connection with the maintenance of the Register in accordance with Section 9.04(b)(iv), maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. 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.

(e) The entries made in the accounts maintained pursuant to paragraph (c) of this Section 2.09 shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement.

(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a Note. In such event, the Borrower shall execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns).

#### SECTION 2.10 Amortization of Term Loans.

(a) Subject to adjustment pursuant to paragraph (c) of this Section 2.10, the Borrower shall repay Initial Term Loans on the last day of each March, June, September and December (commencing on the last day of the first full fiscal quarter following the Effective Date) in the principal amount of Term Loans as follows; provided that if any such date is not a Business Day, such payment shall be due on the next preceding Business Day:

<u>Payment Date</u>	<u>Amortization Payment</u>
September 30, 2017	\$ 1,312,500.00
December 31, 2017	\$ 1,312,500.00
March 31, 2018	\$ 1,312,500.00
June 30, 2018	\$ 1,312,500.00
September 30, 2018	\$ 1,312,500.00
December 31, 2018	\$ 1,312,500.00
March 31, 2019	\$ 1,312,500.00
June 30, 2019	\$ 1,312,500.00
September 30, 2019	\$ 1,312,500.00
December 31, 2019	\$ 1,312,500.00
March 31, 2020	\$ 1,312,500.00
June 30, 2020	\$ 1,312,500.00
September 30, 2020	\$ 1,312,500.00
December 31, 2020	\$ 1,312,500.00
March 31, 2021	\$ 1,312,500.00
June 30, 2021	\$ 1,312,500.00
September 30, 2021	\$ 1,312,500.00
December 31, 2021	\$ 1,312,500.00
March 31, 2022	\$ 1,312,500.00
June 30, 2022	\$ 1,312,500.00
September 30, 2022	\$ 1,312,500.00
December 31, 2022	\$ 1,312,500.00
March 31, 2023	\$ 1,312,500.00
June 30, 2023	\$ 1,312,500.00
September 30, 2023	\$ 1,312,500.00

<u>Payment Date</u>	<u>Amortization Payment</u>
December 31, 2023	\$ 1,312,500.00
March 31, 2024	\$ 1,312,500.00
June 30, 2024	\$ 1,312,500.00

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Term Maturity Date.

(c) Any prepayment of a Term Borrowing of any Class (i) pursuant to Section 2.11(a) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10 as directed by the Borrower (and absent such direction in direct order of maturity; provided that, in the absence of such direction by the Borrower as described in the preceding clause, the Administrative Agent shall make such direction in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16) and (ii) pursuant to Section 2.11(c) or 2.11(d) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10, or, in each case except as otherwise provided in any Incremental Amendment, Refinancing Amendment or Loan Modification Agreement, pursuant to the corresponding section of such Incremental Amendment, Refinancing Amendment or Loan Modification Agreement, as applicable, as directed by the Borrower and, in the absence of such direction, in direct order of maturity (including any Incremental Facility).

(d) Prior to any prepayment of any Term Borrowings of any Class hereunder pursuant to Section 2.11(a), 2.11(c) or 2.11(d), the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Administrative Agent in writing by facsimile or other electronic transmission of such election not later than 2:00 p.m., New York City time, one (1) Business Day before the scheduled date of such repayment. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

#### SECTION 2.11 Prepayment of Loans.

(a) (i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty; provided that in the event that, on or prior to the six month anniversary of the Effective Date, the Borrower (x) makes any prepayment of Initial Term Loans in connection with any Repricing Transaction or (y) effects any amendment of this Agreement resulting in a Repricing Transaction or (z) makes a mandatory prepayment of Initial Term Loans pursuant to Section 2.11(c) in connection with a Prepayment Event described in clause (b) of the definition of “Prepayment Event” resulting in a Repricing Transaction, in either case, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders holding Initial Term Loans, (I) a prepayment premium of 1.00% of the principal amount of the Initial Term Loans being prepaid in connection with such Repricing Transaction and (II) in the case of clause (y), an amount equal to 1.00% of the aggregate amount of the applicable Initial Term Loans outstanding immediately prior to such amendment that are subject to an effective pricing reduction pursuant to such amendment.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 p.m., New York City time, on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$250,000 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. If such notice is given by the Borrower, unless rescinded, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything in any Loan Document to the contrary, so long as no Event of Default has occurred and is continuing, Holdings, the Borrower or any of their respective Subsidiaries may offer to prepay all or a portion of the outstanding Class of any Term Loans on the following basis:

(A) Holdings, the Borrower or any of their respective Subsidiaries shall have the right to make a voluntary prepayment of Term Loans at a discount to par (such prepayment, the “Discounted Term Loan Prepayment”) pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers, in each case made in accordance with this Section 2.11(a)(iii); *provided* that (x) Holdings, the Borrower or any of their respective Subsidiaries shall not make any Borrowing of Revolving Loans or Swing Line Loans to fund any Discounted Term Loan Prepayment and (y) Holdings, the Borrower or any of their respective Subsidiaries shall not initiate any action under this Section 2.11(a)(iii) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by Holdings, the Borrower or any of their respective Subsidiaries on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date Holdings, the Borrower or any of their respective Subsidiaries were notified that no Term Lender was willing to accept any prepayment of any Term Loan and/or Other Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of Holdings’, the Borrower’s or any of their respective Subsidiaries’ election not to accept any Solicited Discounted Prepayment Offers and (z) each Lender participating in any Discounted Term Loan Prepayment acknowledges and agrees that in connection with such Discounted Term Loan Prepayment, (1) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to participate in such Discounted

Term Loan Prepayment (“Excluded Information”), (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to participate in such Discounted Term Loan Prepayment notwithstanding such Lender’s lack of knowledge of the Excluded Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; provided, further, that any Term Loan that is prepaid will be automatically and irrevocably cancelled.

(B) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with three (3) Business Days’ notice in the form of a Specified Discount Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche 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 tranche, the tranche or tranches 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 and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 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 relevant Term 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 City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “Specified Discount Prepayment Response Date”).

(2) Each relevant 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 relevant then outstanding Term Loans at the Specified Discount and, if so (such accepting Term Lender, a “Discount Prepayment Accepting Lender”), the amount and the tranches 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, Holdings, the Borrower or any of their respective Subsidiaries will make prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2); 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries 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 tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches 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, tranche 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by Holdings, the Borrower or any of their respective Subsidiaries on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with three (3) Business Days' notice in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of



Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the “Discount Range Prepayment Amount”), the tranche or tranches 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 tranche of Term Loans willing to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the Borrower or any of their respective Subsidiaries shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 relevant Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “Discount Range Prepayment Response Date”). Each relevant 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 Term Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender’s Term Loans (the “Submitted Amount”) such 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 Holdings, the Borrower or any of their respective Subsidiaries 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). Holdings, the Borrower or any of their respective Subsidiaries agree 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 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 Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, Holdings, the Borrower or any of their respective Subsidiaries will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Lender to be prepaid at the Applicable Discount on such date, and (z) 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by the Borrower on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with three (3) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "Solicited Discounted Prepayment Amount") and the tranche or tranches of Term Loans, Holdings, the Borrower or any of their respective Subsidiaries is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the Borrower or any of their respective Subsidiaries shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time on the third Business Day after the date of delivery of such notice to the relevant 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") such Term Lender is willing to allow to be applied to the prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the "Offered Amount") such Term Lender is willing to have prepaid subject to such 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 Holdings, the Borrower or any of their respective Subsidiaries with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Holdings, the Borrower or any of their respective Subsidiaries shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to Holdings, the Borrower or any of their respective Subsidiaries (the "Acceptable Discount"), if any. If Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries 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”), Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries by the Acceptance Date, Holdings, the Borrower or any of their respective Subsidiaries 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 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 (in consultation with Holdings, the Borrower or any of their respective Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the tranches of Term Loans (the “Acceptable Prepayment Amount”) to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries at the Acceptable Discount in accordance with this Section 2.11(a)(iii)(D). If Holdings, the Borrower or any of their respective Subsidiaries elects to accept any Acceptable Discount, then Holdings, the Borrower or any of their respective Subsidiaries agrees to accept all Solicited Discounted Prepayment Offers received by 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 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”). Holdings, the Borrower or any of their respective Subsidiaries will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender who made a Solicited Discounted Prepayment Offer of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches 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 the Borrower and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Borrower shall be due and payable by the Borrower 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, Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of reasonable and customary fees and expenses from Holdings, the Borrower or any of their respective Subsidiaries in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, Holdings, the Borrower or any of their respective Subsidiaries shall prepay such Term Loans on the Discounted Prepayment Effective Date. Holdings, the Borrower or any of their respective Subsidiaries shall make such prepayment to the Auction 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 2:00 p.m. New York City time on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining principal installments of the relevant tranche of Term Loans as directed by the Borrower. 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 2.11(a)(iii) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable.

The aggregate principal amount of the tranches and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches 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 2.11(a)(iii), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by Holdings, the Borrower or any of their respective Subsidiaries.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.11(a)(iii), 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 Business Day.

(I) Each of Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledges and agrees that the Auction Agent may perform any and all of its duties under this Section 2.11(a)(iii) 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 their respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.11(a)(iii) as well as activities of the Auction Agent.

(J) Holdings, the Borrower or any of their respective Subsidiaries 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, as applicable (and if such offer is revoked pursuant to the preceding clauses, any failure by the Borrower to make any prepayment to a Term Lender, as applicable, pursuant to this Section 2.11(a)(iii) shall not constitute a Default or Event of Default under Section 7.01 or otherwise).

(b) In the event and on each occasion that the aggregate Revolving Exposures exceed the aggregate Revolving Commitments at such time, the Borrower shall prepay Revolving Borrowings and Swing Line Borrowings (or, if no such Borrowings are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j)) in an aggregate amount necessary to eliminate such excess within one (1) Business Day following Borrower's receipt of written notice from the Administrative Agent.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings or its Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five (5) Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term “Prepayment Event”, on the date of such Prepayment Event), prepay Initial Term Loans in an aggregate amount equal to (x) the Prepayment Percentage of the amount of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term “Prepayment Event”, if Holdings, the Borrower or any of the Restricted Subsidiaries invest (or commit to invest) the Net Proceeds from such event (or a portion thereof) within twelve (12) months after receipt of such Net Proceeds in the business of the Borrower and the other Subsidiaries, then no prepayment shall be required pursuant to this paragraph in respect of such Net Proceeds in respect of such event (or the applicable portion of such Net Proceeds, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so invested (or committed to be invested) by the end of such 12-month period (or if committed to be so invested within such 12-month period, have not been so invested within six months following such 12-month period), at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so invested (or committed to be invested); provided, further, that the Borrower may use a portion of such Net Proceeds to prepay or repurchase any Incremental Term Loans, Other Term Loans or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof with the proceeds of such Prepayment Event, in each case in an amount not to exceed the product of (x) the amount of such Net Proceeds and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness.

(d) Following the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2018, the Borrower shall prepay Initial Term Loans in an aggregate amount equal to the ECF Percentage of Excess Cash Flow for such fiscal year; provided that, at the election of the Borrower, such amount shall be reduced by the aggregate amount of voluntary prepayments and repurchases of (i) Term Loans (and, to the extent the Revolving Commitments are reduced in a corresponding amount pursuant to Section 2.08, Revolving Loans) made pursuant to Section 2.11(a) or otherwise in a manner not prohibited by Section 9.04(g) during such fiscal year or after such fiscal year and prior to the time such prepayment is due (without duplication to subsequent years) as provided below (provided that such reduction as a result of prepayments pursuant to Section 2.11(a)(iii) or repurchases pursuant to Section 9.04(g) shall be limited to the actual amount of such cash prepayment or repurchase), (ii) Incremental Facilities (provided that in the case of the prepayment of any revolving loans, there is a corresponding permanent reduction in commitments), and (iii) other Senior Secured First Lien Indebtedness, (provided that (x) in the case of the prepayment of any revolving loans, there is a corresponding reduction in commitments and (y) the reduction as a result of such prepayments and repurchases shall be limited to the actual amount of such cash prepayment or repurchase) made during such fiscal year or, at the option of the Borrower, after such fiscal year and prior to the time such

prepayment is due (without duplication to subsequent years) (excluding in the case of clauses (i), (ii) and (iii) all such prepayments and repurchases funded with the proceeds of other long term Indebtedness). The Borrower may use a portion of such Excess Cash Flow prepayment to prepay or repurchase any Incremental Term Loans, Other Term Loans or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof based on Excess Cash Flow, in each case in an amount not to exceed the product of (x) the amount of such Excess Cash Flow prepayment and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness. Each prepayment of Initial Term Loans pursuant to this paragraph shall be made on or before the date that is ten (10) business days after the date on which financial statements are required to be delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated. Notwithstanding anything herein to the contrary, no prepayment under this Section 2.11(d) shall be required with respect to any fiscal year to the extent Excess Cash Flow for such fiscal year is less than or equal to \$2,500,000 (and only amounts in excess of \$2,500,000 shall be required to be prepaid).

(e) Prior to any optional prepayment of Borrowings pursuant to Section 2.11(a)(i), the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section 2.11. In the event of any optional prepayment of Revolving Borrowings, the Borrower shall select the Class or Classes of Revolving Borrowings to be prepaid. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement, Incremental Facility Amendment or otherwise herein, in the event of any mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the Borrower shall select Term Borrowings to be prepaid so that the aggregate amount of such prepayment shall be allocated among the Classes of Term Borrowings (and, to the extent provided in the Refinancing Amendment for any Class of Other Term Loans, the Borrowings of such Class) pro rata based on the aggregate principal amount of outstanding Borrowings of each Class; provided that any Term Lender (and, to the extent provided in the Refinancing Amendment or Loan Modification Agreement for any Class of Other Term Loans, any Lender that holds Other Term Loans of such Class) may elect, by notice to the Administrative Agent by facsimile at least two (2) Business Days prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans or Other Term Loans of any such Class pursuant to this Section 2.11 (other than an optional prepayment pursuant to paragraph (a)(i) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans or Other Term Loans of any such Class but was so declined (and not used pursuant to the immediately following sentence) shall be retained by Holdings or its Restricted Subsidiaries (such amounts, "Retained Declined Proceeds"). An amount equal to any portion of a mandatory prepayment of Term Borrowings that is declined by the Lenders under this Section 2.11(e) shall, to the extent not prohibited hereunder or under the documentation governing the Permitted First Priority Refinancing Debt or the Pari Passu Intercreditor Agreement, be applied by the Borrower to prepay, pari passu Indebtedness, Second Lien Term Loans or Permitted Junior Priority Refinancing Debt to the extent required by the documentation governing such Indebtedness or be



retained to be used for any other purposes not prohibited hereunder. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement, Incremental Facility Amendment or otherwise herein, optional prepayments of Borrowings of Term Loans should be allocated among the Classes of Term Borrowings pro rata based on the aggregate principal amount of outstanding Borrowings of each Class. In the absence of a designation by the Borrower as described in the preceding provisions of this paragraph of the Type of Borrowing of any Class, the Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16, provided that, in connection with any mandatory prepayments by the Borrower of the Term Loans pursuant to Section 2.11(c) or (d), such prepayments shall be applied on a pro rata basis to the then outstanding Term Loans being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurodollar Loans.

(f) The Borrower shall notify the Administrative Agent of (x) any optional prepayment pursuant to Section 2.11(a)(i) in writing (by facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day before the date of prepayment and (y) any mandatory prepayment pursuant to Section 2.11(c) in writing (by facsimile or other electronic communication) of any payment hereunder no later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of prepayment may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13, and subject to Section 2.11(a)(i) and Section 2.16, shall be without premium or penalty. At the Borrower's election in connection with any prepayment pursuant to this Section 2.11, such prepayment shall not be applied to any Term Loan or Revolving Loan of a Defaulting Lender (under any of subclauses (a), (b) or (c) of the definition of "Defaulting Lender") and shall be allocated ratably among the relevant non-Defaulting Lenders.

(g) Notwithstanding any other provisions of Section 2.11(c) or (d), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event by a Subsidiary of Holdings that is organized or incorporated under the laws of a jurisdiction other than the United States, any state, commonwealth or territory thereof or the District of Columbia, giving rise to a prepayment pursuant to Section 2.11(c) or (d) (a "Restricted Prepayment Event") or Excess Cash Flow are

prohibited or delayed by applicable local law (including financial assistance, corporate benefit, restrictions on repatriating or upstreaming of cash intra-group and the fiduciary and statutory duties of the directors of the relevant subsidiaries) from being repatriated to the Borrower, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or (d), as the case may be, and such amounts may be retained by such Subsidiary, (B) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would have an adverse (other than de minimis) tax consequence to any Loan Party, Subsidiary or, to the extent pass-through entities, any direct or indirect equity holder thereof with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary, (C) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would violate any material organizational document restrictions (as a result of minority ownership) and restrictions in other material agreements (to the extent not in violation of Section 6.09), the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary and (D) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow could reasonably give rise to a risk of liability for the directors of such Subsidiary under applicable local law, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary; provided that (i) Holdings, the Borrower and each Restricted Subsidiary hereby agrees to use commercially reasonable efforts (as determined in the Borrower's reasonable business judgment) to overcome or eliminate any such restrictions on repatriation even if the Borrower does not intend to actually repatriate such cash, so that an amount equal to the full amount of such Net Proceeds will otherwise be subject to repayment under this Section 2.11, and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event could reasonably be expected to have adverse Tax consequences (other than de minimis consequences) for Holdings, the Borrower or any Restricted Subsidiary with respect to such Net Proceeds, an amount equal to such Net Proceeds that would be so affected will not be subject to repayment under this Section 2.11 and such amounts shall be available for general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with this Section 2.11. For the avoidance of doubt, Borrower shall be permitted to make any repayments required by Section 2.11(c) or Section 2.11(d) from any source of funds and shall not be required to make any repayments from funds contained in any particular Loan Party. The non-application of any such prepayment amounts as a result of the foregoing provisions will not constitute a Default or Event of Default and such amounts shall be available for working capital and general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with such provisions. Notwithstanding the foregoing, any payments actually made by the Loan Parties shall be applied net of an amount equal to the additional Taxes of Holdings, its

Subsidiaries and the direct and indirect holders of Equity Interests in Holdings that would be payable or reserved against and any additional costs that would be incurred as a result of a repatriation, whether or not a repatriation actually occurs.

#### SECTION 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent in Dollars for the account of each Revolving Lender (other than a Defaulting Lender) a commitment fee, which shall accrue at the rate of the Commitment Fee Percentage per annum on the daily average unused amount of the Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the last Business Day of March, June, September and December of each year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender; provided that, for purposes of this Section 2.12(a), Swing Line Obligations of a Lender shall not be treated as a utilization of the Revolving Commitment of such Lender.

(b) The Borrower agrees to pay (i) to the Administrative Agent in Dollars for the account of each Revolving Lender (other than any Defaulting Lender) a participation fee with respect to its participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements but taking into account the maximum amount available to be drawn under all outstanding Letters of Credit, whether or not such maximum amount is then in effect) during the period from and including the Effective Date to and including the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank in Dollars a fronting fee (which fee shall be calculated by the Administrative Agent in consultation with the applicable Issuing Bank and payable directly to the applicable Issuing Bank), which shall accrue at a rate of 0.125% per annum on the daily amount of the LC Exposure attributable to Letters of Credit issued by such Issuing Bank (excluding any portion thereof attributable to unreimbursed LC Disbursements but taking into account the maximum amount available to be drawn under all outstanding Letters of Credit, whether or not such maximum amount is then in effect) during the period from and including the Effective Date to and including the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the last Business Day of March, June, September and December, respectively, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after written

demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between the Borrower and the Administrative Agent.

(d) [Reserved].

(e) Notwithstanding the foregoing, and subject to Section 2.22, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 2.12.

#### SECTION 2.13 Interest.

(a) (i) The Loans comprising each ABR Borrowing (other than Swing Line Borrowings) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(ii) Each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternate Base Rate plus the Applicable Rate for Revolving Loans.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate, in each case for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if upon the occurrence and during the continuance of any payment Event of Default, any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall be payable pursuant to this Section 2.13(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender; provided, further that no amounts shall accrue pursuant to this Section 2.13(c) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments, provided that (i) interest accrued pursuant to paragraph (c) of this Section 2.13 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to clause (a) of the definition of Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

#### SECTION 2.14 Alternate Rate of Interest.

If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans");

(c) the Administrative Agent shall give notice thereof to the Borrower and the Lenders by facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, in the event any Loans are so affected, (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, then such Borrowing shall be made as an ABR Borrowing; provided, however, that, in each case, the Borrower may revoke any Borrowing Request that is pending when such notice is received.

(d) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a) of this Section 2.14 and/or is advised by the Required Lenders of their determination in accordance with clause (b) of this Section 2.14 and the Borrower shall so request, the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend the definition of "LIBO Rate" and other applicable provisions to preserve the original intent thereof in light of such change; provided that, until so amended, such Impacted Loans will be handled as otherwise provided pursuant to the terms of this Section 2.14.

#### SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Excluded Taxes and Indemnified Taxes) affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender or Issuing Bank, the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank, as the case may be, for such increased costs actually incurred or reduction actually suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then, from time to time upon request of such Lender or Issuing Bank, the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction actually suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section 2.15 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

## SECTION 2.16 Break Funding Payments.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(c), then, in any such event, the Borrower shall, after receipt of a written request by any Lender affected by any such event (which request shall set forth in reasonable detail the basis for requesting such amount), compensate each Lender for the loss, cost and expense (excluding loss of profit) actually incurred by it as a result of such event. For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 2.16, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Adjusted LIBO Rate for such Loan by a matching deposit or other borrowing in the applicable interbank eurodollar market, for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 and the reasons therefor delivered to the Borrower shall be prima facie evidence of such amounts. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after receipt of such demand; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.16 for any loss, cost or expense more than 180 days prior to the date that such Lender delivers such certificate. Notwithstanding the foregoing, this Section 2.16 will not apply to losses, costs or expenses resulting from Taxes, as to which Section 2.17 shall govern. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.16 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

## SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If the applicable withholding agent (including, for the avoidance of doubt, the Administrative Agent or any Loan Party) shall be required by applicable Requirements of Law (as determined in the good faith discretion of the applicable withholding agent) to deduct any Taxes from such payments, then the applicable withholding agent shall make such deductions and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law, and if such Taxes are Indemnified Taxes, then the amount payable by the applicable Loan Party shall be increased as necessary so that after all such required deductions have been made (including such deductions and withholdings applicable to additional amounts payable under this Section 2.17), each Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay, or, at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender within thirty (30) days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party under any Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, that the Borrower shall not be obligated to make payment to the Administrative Agent or a Lender, as the case may be, for penalties, interest or expenses attributable to the gross negligence or willful misconduct of the Administrative Agent or such Lender, as applicable, as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) To the extent required by any applicable Requirements of Law (as determined in good faith by the Administrative Agent), the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered 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), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Loan Parties for such Taxes pursuant to this Section 2.17 and without limiting any obligation of the Loan Parties to do so pursuant to this Section 2.17) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses, and any other out-of-pocket expenses, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 2.17(d). The agreements in this Section 2.17(d) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, any assignment of rights by a Loan Party, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations under any Loan Document.



(e) As soon as practicable after any payment of any Taxes by a Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Each Lender shall, at such times as are reasonably requested by Borrower or the Administrative Agent, (i) complete any documentation required for the Borrower or the Administrative Agent, as applicable, to obtain clearance to make payments under the Loan Documents without, or with a reduction in, any withholding Tax and to determine whether or not such Lender is subject to backup withholding or information reporting requirements and (ii) provide the Borrower and the Administrative Agent with any properly completed and executed documentation prescribed by any Requirement of Law, 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, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation expired, obsolete or inaccurate in any respect (including any specific documentation required below in this Section 2.17(f)), deliver promptly to Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to Tax at a rate reduced by an applicable Tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and submission of such documentation (other than such documentation set forth in this Section 2.17(f)(i), (ii)(A) through (D), and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the generality of the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) 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 reasonable request of the Borrower or the Administrative Agent) two properly completed and duly signed copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is a 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 reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) 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, (x) two properly completed and duly signed certificates, substantially in the form of Exhibit N-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (any such certificate a “United States Tax Compliance Certificate”), and (y) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two properly completed and duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit N-2 or Exhibit N-3, Internal Revenue Service Form W-9, Internal Revenue Service Form W-8IMY (or other successor forms) and/or any other required information from each beneficial owner that would be required under this Section 2.17 if such beneficial owner were a Lender, as applicable (provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, a United States Tax Compliance Certificate substantially in the form of Exhibit N-4 may be provided by such Foreign Lender on behalf of each such direct or indirect partner), or

(E) two properly completed and duly signed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to any Lender under any Loan Document would be subject to withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such

documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding any other provision of this clause (f), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(g) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded hereunder, the Administrative Agent or the relevant Lender, as applicable, shall use commercially reasonable efforts to cooperate with the Borrower in a reasonable challenge of such Taxes if so requested by the Borrower, provided that (a) the Administrative Agent or such Lender determines in its reasonable discretion that it would not be subject to any unreimbursed third party cost or expense or otherwise be prejudiced by cooperating in such challenge, (b) the Borrower pays all related expenses of the Administrative Agent or such Lender, as applicable and (c) the Borrower indemnifies the Administrative Agent or such Lender, as applicable, for any liabilities or other costs incurred by such party in connection with such challenge. If the Administrative Agent or a Lender receives a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to promptly repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. The Administrative Agent or such Lender, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (provided that the Administrative Agent or such Lender may delete any information therein that the Administrative Agent or such Lender deems confidential). Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Notwithstanding anything to the contrary, this Section 2.17(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to Taxes which it deems confidential) to any Loan Party or any other person. Notwithstanding anything herein to the contrary, the Borrower shall not be required to compensate such Lender for any amount incurred under this Section 2.17 more than one hundred and eighty (180) days prior to the date that such Lender notifies the

Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such one hundred and eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof.

(h) The agreements in this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(i) For purposes of this Section 2.17, the term "Lender" shall include any Issuing Bank and the term "applicable Requirements of Law" includes FATCA.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) at or prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time, on the date when due), in immediately available funds, without condition or deduction for any counterclaim, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made in Dollars (provided that any payment with respect to any Loan denominated in an Alternative Currency shall be made in such Alternative Currency) to such account as may be specified by the Administrative Agent. Payments to be made directly to any Issuing Bank shall be made as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as otherwise provided herein, if any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements and Swing Line Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements and Swing Line Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans or Revolving Commitments of that Class or any increase in the Applicable Rate in respect of Loans of Lenders that have consented to any such extension. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower's rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders or Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(e), Section 2.05(f), Section 2.06(a), Section 2.06(b), Section 2.18(d) or Section 9.03(c), then the Administrative Agent may, in its discretion and in the order determined

by the Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

**SECTION 2.19 Mitigation Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or any event gives rise to the operation of Section 2.23, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or its participation in any Letter of Credit affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 or mitigate the applicability of Section 2.23, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense reasonably deemed by such Lender to be material and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender.

(b) If (i) any Lender requests compensation under Section 2.15 or gives notice under Section 2.23, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Disqualified Lender or (iv) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (1) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation) or (2) prepay the Loans and, if applicable, terminate the Revolving Commitments of such Defaulting Lender; provided that (A) in the case of preceding clause (1), the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable (and if a Revolving Commitment is being assigned and delegated, each Issuing Bank), which consents, in each case, shall not unreasonably be withheld, conditioned or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and unreimbursed participations in LC Disbursements and Swing Line Loans, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder from (x) in the case of preceding clause (1), the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (y) in the case of preceding clause (2), from the Borrower, (C) in the case of preceding clause (1), the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.15, or payments required to be made pursuant to Section 2.17 or a notice given under Section 2.23, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and

delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

#### SECTION 2.20 Incremental Credit Extensions.

(a) The Borrower may at any time or from time to time on one or more occasions after the Effective Date, by written notice delivered to the Administrative Agent request (i) one or more additional Classes of term loans (each an “Incremental Term Facility”), (ii) one or more additional term loans of the same Class of any existing Class of term loans (each an “Incremental Term Increase”) and (iii) one or more increases in the amount of the Revolving Commitments of any Class (each such increase, an “Incremental Revolving Commitment Increase” and, together with any Incremental Term Facility and any Incremental Term Increase, the “Incremental Facilities” and any Loans thereunder, the “Incremental Loans”); provided that, after giving effect to the effectiveness of any Incremental Facility Amendment, no Event of Default shall have occurred and be continuing or would result therefrom (provided, further that, in the case of an Incremental Facility incurred to finance a Limited Condition Transaction, if the Borrower has made an LCT Election, such condition shall be that no Event of Default shall have occurred and be continuing at the LCT Test Date). Notwithstanding anything to contrary herein, the aggregate principal amount of the Incremental Facilities that can be incurred at any time shall not exceed the Incremental Cap at such time. Each Incremental Facility shall be in a minimum principal amount of \$10,000,000 and integral multiples of \$1,000,000 in excess thereof (unless the Borrower and the Administrative Agent otherwise agree); provided that such amount may be less than \$10,000,000 to the extent such amount represents all the remaining availability under the aggregate principal amount of Incremental Facilities set forth above.

(b) (i) The Incremental Term Loans (a)(1) shall rank equal or junior in right of payment and equal or junior in right of security with the Term Loans or may be unsecured, and if junior in right of payment and/or security or unsecured, shall be established as a separate facility than the facility for the Term Loans that are secured by the Collateral on a first priority basis, (2) shall be structured such that neither Holdings nor any Restricted Subsidiary is a guarantor with respect to such Indebtedness unless Holdings or such Restricted Subsidiary is a Loan Party which shall have previously or substantially concurrently guaranteed the Loan Document Obligations, and (3) if secured, the obligations in respect thereof shall not be secured by Liens on the assets of Holdings and the Restricted Subsidiaries, other than assets constituting Collateral, and if established as a separate facility, shall be subject to a customary intercreditor agreement with the Administrative Agent and/or Collateral Agent substantially consistent with the applicable Intercreditor Agreement together with any immaterial changes in form and substance reasonably satisfactory to the Administrative Agent and/or Collateral Agent (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior liens may be secured by Liens that are pari passu with or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans), (b) shall not (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be

exchanged for permanent refinancing that does not mature prior to the Term Maturity Date of the Initial Term Loans) mature earlier than the Term Maturity Date of the Initial Term Loans, (c) shall not (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not have a shorter Weighted Average Life to Maturity than the remaining Initial Term Loans) have a shorter Weighted Average Life to Maturity than the remaining Initial Term Loans, (d) shall have a maturity date (subject to clause (b)), an amortization schedule (subject to clause (c)), interest rates (including through fixed interest rates), "most favored nation" provisions (if any), interest margins, rate floors, upfront fees, funding discounts, original issue discounts, financial covenants (if any) and prepayment terms and premiums as determined by the Borrower and the Additional Term Lenders thereunder; provided that, for any Incremental Term Loans which are secured on a pari passu basis with the Initial Term Loans and ranking pari passu in right of payment with the Initial Term Loans, in the event that the Effective Yield for any such Incremental Term Loans is greater than the Effective Yield for the Initial Term Loans by more than 0.50% per annum, then the Effective Yield for the Initial Term Loans shall be increased to the extent necessary so that the Effective Yield for the Initial Term Loans is equal to the Effective Yield for such Incremental Term Loans minus 0.50% per annum; provided, further, that if the Incremental Term Loans include an interest rate floor greater than the applicable interest rate floor under the Initial Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the interest rate margin under the Initial Term Loans shall be required, but only to the extent an increase in the interest rate floor in the Initial Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the Initial Term Loans shall be increased to the extent of such differential between interest rate floors, (e) (i) to the extent secured on a pari passu basis with the Initial Term Loans and pari passu in right of payment with the Initial Term Loans, may provide for the ability to participate (x) on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) in any voluntary prepayments of the Initial Term Loans and (y) on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis other than in the case of prepayment with Other Term Loans incurred pursuant to a Refinancing Amendment to refinance such Incremental Term Loans or any other Credit Agreement Refinancing Indebtedness in respect of such Incremental Term Loans) in any mandatory prepayments of the Initial Term Loans and (ii) to the extent subordinated in right of payment to the Initial Term Loans, subordinated in right of security to the Initial Term Loans and/or unsecured, shall be prepaid on a less than pro rata basis in any prepayments of the Initial Term Loans (other than in the case of a prepayment with Other Term Loans pursuant to a Refinancing Amendment or any other Credit Agreement Refinancing Indebtedness, in each case to refinance such Incremental Term Loans) and (f) may otherwise have terms and conditions different from those of the Term Loans; provided that (x) to the extent the terms and documentation with respect to such Incremental Term Loans are not consistent with the existing Initial Term Loans (except with respect to matters contemplated by clauses (a), (b), (c), (d) and (e) above), the covenants, events of default and guarantees of any such Incremental Term Loans shall not be materially more restrictive to the Borrower, when taken as a whole, than the terms of the Initial Term Loans unless (1) Lenders under the Initial Term Loans also receive the benefit of such more restrictive terms (it being understood that, to the extent that any covenant, event of default or guarantee is added or modified for the benefit of any Incremental Term Facility, no consent shall be required from the Administrative Agent or any of the Term Lenders to the



extent that such covenant, event of default or guarantee is also added or modified for the benefit of the existing Term Loans), (2) any such provisions apply after the Term Maturity Date with respect to the Initial Term Loans or (3) such terms are reasonably satisfactory to the Administrative Agent and the Borrower and (y) in no event shall it be a condition to the effectiveness of, or borrowing under, any such Incremental Term Loans that any representation or warranty of any Loan Party set forth herein be true and correct, except and solely to the extent required by the Additional Term Lenders providing such Incremental Term Loans. Any Incremental Term Increase shall be on the same terms (other than original issue discount and upfront fees but subject to clause (d) above) and pursuant to the same documentation applicable to the Term Loans (except with respect to the Incremental Facility Amendment evidencing such Incremental Term Increase)). Any Incremental Term Facility shall be on terms and pursuant to documentation as determined by the Borrower and the Additional Term Lenders providing such Incremental Term Facility, subject to the restrictions and exceptions set forth above. Each Incremental Facility Amendment may, without the consent of any other Lenders, effect technical and corresponding amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.20, including any amendments necessary to provide that such Incremental Term Loans are fungible with any existing Class of Loans for U.S. federal income tax purposes.

(ii) The Incremental Revolving Commitment Increase shall be treated the same as the Class of Revolving Commitments being increased (including with respect to maturity date thereof) and shall be considered to be part of the Class of Revolving Loans being increased). Any Incremental Revolving Commitment Increase shall be on the same terms (other than upfront fees) and pursuant to the same documentation (other than the Incremental Facility Amendment evidencing such Incremental Revolving Commitment Increase) applicable to the Revolving Loans (excluding upfront fees and customary arranger fees).

(c) Each notice from the Borrower pursuant to this Section shall set forth the requested amount of the relevant Incremental Term Loans or Incremental Revolving Commitment Increases.

(d) Commitments in respect of any Incremental Loans shall become Commitments (or in the case of an Incremental Revolving Commitment Increase to be provided by an existing Lender with a Revolving Commitment, an increase in such Lender's applicable Revolving Commitment) under this Agreement pursuant to an amendment (an "Incremental Facility Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each applicable Additional Lender, if any, and the Administrative Agent (provided, that if such amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall not be required to execute or acknowledge such amendment; provided, further that, in any event, the Administrative Agent shall receive prior written notice of such Incremental Facility Amendment). An Incremental Facility may be provided, subject to the prior written consent of the Borrower (not to be unreasonably withheld), by any existing Lender (it being understood that no existing Lender shall have the right to participate in any Incremental Facility or, unless it agrees, be obligated to provide any Incremental Loans) or by any Additional Lender. Any loan under an Incremental Term Increase and any loan under an Incremental Revolving

Commitment Increase shall be a “Loan” for all purposes of this Agreement and the other Loan Documents. The Incremental Facility Amendment may, subject to Section 2.20(b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.20 (including, in connection with an Incremental Revolving Commitment Increase, to reallocate Revolving Exposure on a pro rata basis among the relevant Revolving Lenders and including voting rights as contemplated by Section 9.02). The effectiveness of any Incremental Facility Amendment and the occurrence of any credit event (including the making (but not the conversion or continuation) of a Loan and the issuance, increase in the amount, or extension of a Letter of Credit thereunder) pursuant to such Incremental Facility Amendment shall be subject to the satisfaction on the date of such Incremental Facility Amendment of such conditions as the parties thereto shall agree and as required by this Section 2.20 (each such date, an “Incremental Facility Closing Date”). The Borrower will use the proceeds of the Incremental Term Loans and Incremental Revolving Commitment Increases for any purpose not prohibited by this Agreement.

(e) Notwithstanding anything to the contrary, this Section 2.20 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

#### SECTION 2.21 Refinancing Amendments.

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of (i) all or any portion of the Term Loans then outstanding under this Agreement (which for purposes of this clause (i) will be deemed to include any then outstanding Other Term Loans) or (ii) all or any portion of the Revolving Loans (or unused Revolving Commitments) under this Agreement (which for purposes of this clause (ii) will be deemed to include any then outstanding Other Revolving Loans and Other Revolving Commitments), in the form of (x) Other Term Loans or Other Term Commitments or (y) Other Revolving Loans or Other Revolving Commitments, as the case may be, in each case pursuant to a Refinancing Amendment; provided that such Credit Agreement Refinancing Indebtedness (i) will be unsecured or will rank pari passu or junior in right of payment and of security with the other Loans and Commitments hereunder, (ii) will have such pricing and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof, and (iii) the Net Proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of any outstanding Term Loans or reduction of Revolving Commitments being so refinanced, as the case may be. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of the conditions as agreed between the lenders providing such Credit Agreement Refinancing Indebtedness and the Borrower. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.21 shall be in an aggregate principal amount that is (x) not less than \$10,000,000 in the case of Other Term Loans or \$10,000,000 in the case of Other Revolving Loans and (y) an integral multiple of \$1,000,000 in excess thereof (in each case unless the Borrower and the Administrative Agent otherwise agree). Any Refinancing Amendment may provide for the issuance of Letters of Credit for the account of the Borrower pursuant to any Other Revolving Commitments established thereby, in each case on terms substantially equivalent to the terms applicable to Letters of Credit under the Revolving Commitments; provided that no Issuing Bank shall be required to act as “issuing bank” under any such Refinancing Amendment without its

written consent. 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Commitments). In the case of any Credit Agreement Refinancing Indebtedness in the form of Other Revolving Loans or Other Revolving Commitments, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Commitments (and related outstandings), (B) repayments required upon the maturity date of the Other Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (2) below)) of Loans with respect to Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments, (2) the permanent repayment of Revolving Loans with respect to, and termination of, Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments (except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared with any other Class with a later maturity date than such Class) and (3) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans. 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. In addition, if so provided in the relevant Refinancing Amendment and with the consent of each Issuing Bank and/or the Swing Line Lender, as applicable, participations in Letters of Credit and/or Swing Line Loans expiring on or after the Revolving Maturity Date shall be reallocated from Lenders holding Revolving Commitments to Lenders holding extended revolving commitments in accordance with the terms of such Refinancing Amendment; provided, however, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Commitments, be deemed to be participation interests in respect of such Revolving Commitments and the terms of such participation interests (including, without limitation, the commission applicable thereto) shall be adjusted accordingly.

(b) If, in connection with any proposed Refinancing Amendment with respect to any Class of Loans, any Lender of such Class which has been offered to such Lender who declines to provide any portion of the Credit Agreement Refinancing Indebtedness on the terms provided by the other Lenders providing such Credit Agreement Refinancing Indebtedness (each such Lender, a “Non-Refinancing Lender”) then the Borrower may, on notice to the Administrative Agent and the Non-Refinancing Lender, (i) cause such Lender to (and such Lender shall be obligated to (and to the extent such Non-Refinancing Lender does not execute such Refinancing Amendment, such Refinancing Amendment shall nonetheless be effective without such signature of the Non-Refinancing Lender)) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the applicable Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender

accepts such assignment) in connection with such Refinancing Amendment or (ii) in the case of Revolving Commitments only, prepay, and terminate the Revolving Commitments of, such Lenders; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) such Non-Refinancing Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the applicable Class assigned by it pursuant to this Section 2.21(b), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (b) in connection with an assignment pursuant to clause (i), no processing and recordation fee specified in Section 9.04(b) shall be payable in connection therewith. If any applicable Lender shall be deemed a Non-Refinancing Lender and is required to assign all or any portion of its Initial Term Loans on or prior to the six-month anniversary of the Effective Date in connection with any such Refinancing Amendment constituting a Repricing Transaction, the Borrower shall pay such Non-Refinancing Lender a fee equal to 1.00% of the principal amount of the Initial Term Loans so assigned.

(c) This Section 2.21 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

#### SECTION 2.22 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii) Reallocation of Payments. Subject to the last sentence of Section 2.11(f), 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 VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, in the case of a Revolving Lender, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to each Issuing Bank or the Swing Line Lender hereunder; third, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fourth, in the case of a Revolving Lender, if so 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; fifth, to the payment of any amounts owing to the Lenders, the Swing Line Lender or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender, such Issuing Bank against that

Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; sixth, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and seventh, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans or LC Disbursements and such Lender is a Defaulting Lender under clause (a) of the definition thereof, such payment shall be applied solely to pay the relevant Loans of, and LC Disbursements owed to, the relevant non-Defaulting Lenders on a pro rata basis prior to being applied pursuant to Section 2.05(j) or this Section 2.22(a)(ii). 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 Section 2.05(j) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive or accrue any commitment fee pursuant to Section 2.12(a) 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 (y) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.12(b).

(iv) 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 Swing Line Loans pursuant to Section 2.04 and, in Letters of Credit pursuant to Section 2.05 and the payments of participation fees pursuant to Section 2.12(b), the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving 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 and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that non-Defaulting Lender minus (2) the sum of (A) the aggregate principal amount of the Revolving Loans of that non-Defaulting Lender plus (B) the LC Exposure of that non-Defaulting Lender plus (C) the Swing Line Obligations of that non-Defaulting Lender.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, cash collateralize the Issuing Banks' and Swing Line Lender's Defaulting Lender Fronting Exposure in accordance with the procedures set forth in Section 2.05(j).

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swing Line Lender and each Issuing Bank 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), such 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 Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.22(a)(iv) or the proviso to the definition thereof), 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; and provided, further, that except to the extent otherwise expressly agreed by the affected parties and subject to Section 9.20, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### SECTION 2.23 Illegality.

If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to the Adjusted LIBO Rate, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to Borrower through the Administrative Agent (i) any obligation of such Lender to make or continue Eurodollar Loans in the affected currency or currencies or to convert ABR Loans to Eurodollar Loans in the affected currency or currencies shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Adjusted LIBO Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate 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, (x) the Borrower shall, upon three (3) Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate Base Rate either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted LIBO Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Adjusted LIBO Rate 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 Adjusted LIBO Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.24 Loan Modification Offers.

(a) At any time after the Effective Date, the Borrower may on one or more occasions, by written notice to the Administrative Agent, make one or more offers (each, a “Loan Modification Offer”) to all the Lenders of one or more Classes (each Class subject to such a Loan Modification Offer, an “Affected Class”) to effect one or more Permitted Amendments relating to such Affected Class pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower (including mechanics to permit cashless rollovers and exchanges by Lenders). Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Loans and Commitments of the Lenders of the Affected Class that accept the applicable Loan Modification Offer (such Lenders, the “Accepting Lenders”) and, in the case of any Accepting Lender, only with respect to such Lender’s Loans and Commitments of such Affected Class as to which such Lender’s acceptance has been made.

(b) A Permitted Amendment shall be effected pursuant to a Loan Modification Agreement executed and delivered by Holdings, Borrower, each applicable Accepting Lender and the Administrative Agent (provided that, if such amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such amendment). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each Loan Modification Agreement may, without the consent of any Lender other than the applicable Accepting Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to give effect to the provisions of this Section 2.24, including any amendments necessary to treat the applicable Loans and/or Commitments of the Accepting Lenders as a new “Class” of loans and/or commitments hereunder. In the case of any Permitted Amendment in the form of Revolving Loans or Revolving Commitments of an Affected Class, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Revolving Commitments of the Affected Class (and related outstandings), (B) repayments required upon the maturity date of the Revolving Commitments of the Affected Class and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (2) below)) of Loans with respect to Revolving Commitments of the Affected Class after the date of obtaining any Revolving Commitments of the Affected Class shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments, (2) the permanent repayment of Revolving Loans with respect to, and termination of, Revolving Commitments of the Affected Class after the date of obtaining any Revolving Commitments of the Affected Class shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments (except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared with any other Class with a later maturity date than such Class) and (3) assignments and participations of Revolving Commitments of the Affected Class and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans. 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.

(c) If, in connection with any proposed Loan Modification Offer, any Lender declines to consent to such Loan Modification Offer on the terms and by the deadline set forth in such Loan Modification Offer (each such Lender, a “Non-Accepting Lender”) then the Borrower may, on notice to the Administrative Agent and the Non-Accepting Lender, (i) replace such Non-Accepting Lender in whole or in part by causing such Lender to (and such Lender shall be obligated to) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the Affected Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) or (ii) in the case of Revolving Commitments only, prepay and terminate the Revolving Commitments of, such Lenders; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) the applicable assignee shall have agreed to provide Loans and/or Commitments on the terms set forth in the applicable Permitted Amendment, (b) such Non-Accepting Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the Affected Class assigned by it pursuant to this Section 2.24(c), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (c) the processing and recordation fee specified in Section 9.04(b) shall be payable by the Borrower.

(d) Notwithstanding anything to the contrary, this Section 2.24 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Lenders that as of the Effective Date:

##### SECTION 3.01 Organization; Powers.

Subject to the Legal Reservations, each of Holdings, the Borrower and the Restricted Subsidiaries is (a) duly organized or incorporated, validly existing and in good standing (to the extent such concept exists in the jurisdiction of organization of such Person) under the laws of the jurisdiction of its organization or incorporation, (b) has the corporate or other organizational power and authority to carry on its business as now conducted and to execute, deliver and perform its obligations under each Loan Document to which it is a party and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the cases of clause (a) (other than with respect to the Borrower), clause (b) and clause (c), where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.



### SECTION 3.02 Authorization; Enforceability.

This Agreement has been duly authorized, executed and delivered by each of Holdings and the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to the Legal Reservations.

### SECTION 3.03 Governmental Approvals; No Conflicts.

Except as set forth on Schedule 3.03, the Financing Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents and the Second Lien Loan Documents, (b) will not violate (i) the Organizational Documents of, or (ii) any Requirements of Law applicable to, Holdings, the Borrower or any Restricted Subsidiary, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any Restricted Subsidiary or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by Holdings, the Borrower or any Restricted Subsidiary, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary (other than Liens created under the Loan Documents and the Second Lien Loan Documents, as applicable) except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right, as the case may be, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### SECTION 3.04 Financial Condition; No Material Adverse Effect.

(a) The Historical Audited Financial Statements and the Unaudited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the consolidated financial condition of Holdings and its Subsidiaries as of the respective dates thereof and their consolidated results of operations and cash flows for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The Pro Forma Financial Statements have been prepared in good faith, based on assumptions and adjustments believed by the Borrower to be reasonable as of the date of delivery thereof, and, to the knowledge of Holdings and the Borrower, present fairly in all material respects on a pro forma basis the estimated unaudited financial position of Holdings and its Subsidiaries as at March 31, 2017 and their estimated unaudited results of operations for the period covered thereby, in each case after giving effect to the Transactions, subject to audit adjustments.

(c) Since the Effective Date, there has been no Material Adverse Effect.

### SECTION 3.05 Properties.

Each of Holdings, the Borrower and the Restricted Subsidiaries has good and marketable title to, or valid interests in, all its real and tangible personal property material to its business, if any (including all of the Mortgaged Properties), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in each case, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

### SECTION 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 3.06, and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has, to the knowledge of Holdings or the Borrower, become subject to any Environmental Liability or (iii) has received written notice of any claim, citation, investigation, or remedial or corrective action obligation, with respect to any Environmental Liability.

### SECTION 3.07 Compliance with Laws and Agreements.

Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures and other agreements and instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

### SECTION 3.08 Investment Company Status.

None of the Loan Parties is required to register as an “investment company” under the Investment Company Act of 1940, as amended from time to time.

### SECTION 3.09 Taxes.

Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns and reports required to have been filed and (b) have paid or caused to be paid all Taxes required to be paid, except any Taxes that are being contested in good faith by appropriate proceedings, provided that Holdings, the Borrower or Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.

### SECTION 3.10 ERISA.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan sponsored by a Loan Party is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the three year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, and (ii) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA. There exists no Unfunded Pension Liability with respect to Plans in the aggregate (taking into account only Plans with positive Unfunded Pension Liability) except as would not be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect: (i) each employee benefit plan (as defined in Section 3(2) of ERISA) sponsored by Holdings or the Borrower that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service; (ii) to the knowledge of Holdings and the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status; and (iii) there are no pending or, to the knowledge of Holdings and the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any such plan.

### SECTION 3.11 Disclosure.

As of the Effective Date, all written factual information and written factual data (other than projections, any pro forma financial information (including the Pro Forma Financial Statements), budgets, other forward-looking information or information consisting of statements, estimates or forecasts regarding the future condition of the industries in which the Loan Parties operate and information of a general economic or industry specific nature) made available by the Borrower or its representatives, in their official capacity as such, to the Administrative Agent, any Joint Lead Arranger or any Lender in connection with the Transactions, when taken as a whole after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not materially misleading in the light of the circumstances under which they were made; provided that, with respect to the projections of Holdings and its Subsidiaries included in the Information Memorandum, Holdings and the Borrower represent that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time furnished, it being understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings and (iii) no assurance can be given that any

particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

SECTION 3.12 Subsidiaries. As of the Effective Date, after giving effect to the Transactions to occur on the Effective Date, Schedule 3.12 sets forth the name of, and the ownership interest of each Subsidiary of Holdings.

SECTION 3.13 Intellectual Property; Licenses, Etc.

Except as would not reasonably be expected to have a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries owns, licenses or possesses the right to use all Intellectual Property that is reasonably necessary for the operation of its business substantially as currently conducted. Neither Holdings, the Borrower nor any Restricted Subsidiary, in the operation of its business as currently conducted, is infringing upon the Intellectual Property of any Person, except for such infringements that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No claim or litigation challenging the use of any Intellectual Property by Holdings, the Borrower or any Restricted Subsidiary or the validity or enforceability of any Intellectual Property owned by Holdings, the Borrower or any Restricted Subsidiary is pending or, to the knowledge of Holdings and the Borrower, threatened in writing against Holdings, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 3.14 Solvency.

As of the Effective Date, immediately after, and giving Pro Forma Effect to, the consummation of each of the Transactions to occur on the Effective Date, after taking into account, and giving effect to, all applicable rights of indemnity and contribution, as of such time, (a) the sum of the debt (including contingent liabilities) of Holdings and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole; (b) the capital of Holdings and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Holdings and its Subsidiaries, taken as a whole, contemplated as of the date hereof; (c) the present fair and saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole, is greater than the amount that will be required to pay the probable liabilities (including contingent liabilities) of Holdings and its Subsidiaries as they become absolute and matured in the ordinary course; and (d) Holdings and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debts as they mature in the ordinary course of business. For the purposes of this Section 3.14, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5) in the ordinary course of business.

### SECTION 3.15 Federal Reserve Regulations.

No part of the proceeds of the Loans will be used by Holdings or any Subsidiary, directly or indirectly, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors) or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

### SECTION 3.16 USA PATRIOT Act; OFAC and Anti-Corruption.

(a) The Borrower will not, directly or, knowingly, indirectly use the proceeds of the Loans or lend, contribute or otherwise make available such proceeds to any Person for the purpose of funding activities or business of or with any Person that, at the time of such funding, is the subject of Sanctions, or in any Sanctioned Country, in each case, in violation of Sanctions, or in any other manner that would result in a violation by any party to this Agreement of Sanctions applicable to such party. The Borrower will not use the proceeds of the Loans for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity on behalf of the government, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation in any material respect of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption law.

(b) Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance in all material respects with (i) applicable regulations and other Sanctions, (ii) Title III of the USA Patriot Act and (iii) the FCPA and any other applicable anti-corruption law.

(c) None of Holdings, the Borrower, any of the Restricted Subsidiaries, one or more individuals or entities holding 50% or more of the equity interests of Holdings, or, to the knowledge of the Borrower, any director, officer, employee or agent thereof, are individuals or entities currently on OFAC’s list of Specially Designated Nationals and Blocked Persons and/or any similar list maintained by any Sanctions Authority, or located, organized or resident in a Sanctioned Country.

### SECTION 3.17 Security Documents

(a) Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Security Documents and any other documents and instruments necessary to satisfy the Collateral and Guarantee Requirement, together with such timely filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to the Administrative Agent (or its agent) of any Pledged Debt (as defined in the Collateral Agreement) and any Pledged Equity (as defined in the Collateral Agreement) required to be delivered pursuant to the applicable Security Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties to the extent required hereunder or thereunder, a legal, valid, enforceable (subject to applicable Debtor Relief Laws and any other applicable bankruptcy, insolvency, reorganization, moratorium, examinership or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law) and perfected Lien with the ranking or priority required by the relevant Security Documents (subject to Liens permitted herein) on all right, title and interest of the respective Loan Parties in the Collateral described therein (other than foreign Intellectual Property).

(b) Notwithstanding anything herein (including this Section 3.17) or in any other Loan Document to the contrary, neither the Borrower nor any other 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 (other than a Foreign Subsidiary that becomes a Loan Guarantor pursuant to Section 5.13 and to the extent local law security documents are delivered pursuant to Section 5.13) or any foreign Intellectual Property, 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 Requirements or (C) on the Effective Date and until required pursuant to Section 5.19 or 4.01(f), 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 Effective Date pursuant to Section 4.01(f).

SECTION 3.18 [Reserved]

SECTION 3.19 [Reserved]

SECTION 3.20 Use of Proceeds

The Borrower has used the proceeds of the Loans and the Letters of Credit issued hereunder only in compliance with (and not in contravention of) Section 5.10, applicable Requirements of Law and each Loan Document.

## ARTICLE IV

### CONDITIONS

SECTION 4.01 Effective Date.

The obligation of each Lender to make Loans and the obligations of each Issuing Bank to issue Letters of Credit hereunder on the Effective Date shall be subject to satisfaction of the following conditions (or waiver thereof in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from the Borrower and Holdings either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent, the Lenders, the Swing Line Lender and the Issuing Banks and dated the Effective Date) of Latham & Watkins LLP, New York counsel for the Loan Parties.

(c) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming satisfaction of the conditions set forth in paragraphs (g) and (i) of this Section 4.01 and (ii) a customary certificate of each Effective Date Loan Party, dated the Effective Date, executed by any Responsible Officer of such Loan Party including or attaching only those documents referred to in paragraph (d) of this Section 4.01 and confirming that such documents are correct, complete and in full force and effect and have not been amended or superseded as of the Effective Date.

(d) The Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party relating to it, certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) copies of resolutions of the Board of Directors of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by a secretary, an assistant secretary or a Responsible Officer of such Loan Party as being in full force and effect without modification or amendment and (iv) a good standing certificate (to the extent such concept exists in the jurisdiction of incorporation, organization or formation of such Loan Party) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Administrative Agent shall have received (or shall receive substantially contemporaneously with funding on the initial Loans hereunder) (which amounts may be funded from the proceeds of the initial Loans hereunder) all fees and other amounts previously agreed in writing by the Joint Lead Arrangers and the Borrower to be due and payable on or prior to the Effective Date, including, to the extent invoiced at least three (3) Business Days prior to the Effective Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) The Effective Date Loan Parties shall have satisfied the Collateral and Guarantee Requirement; provided that to the extent any lien searches (other than UCC lien searches in the jurisdiction of organization of the Borrower and the Loan Guarantors) or Collateral (including the creation or perfection of any security interest) is not or cannot be provided on the Effective Date (other than (i) the execution and delivery of the Guarantee Agreement and the Collateral Agreement by the Effective Date Loan Parties described in the definition of such terms and (ii) the creation and perfection of the security interest in Collateral with respect to which a lien may be perfected solely by the filing of financing statements under the UCC and/or by delivering stock certificates of the certificated stock of the Borrower and any wholly-owned U.S. domestic subsidiaries of the Borrower to the extent the capital stock represented thereby is required to be pledged hereunder (other than, in the case of the Company and its subsidiaries, with respect to any such certificate that has not been made available prior to the Effective Date, to the extent the Borrower has used commercially reasonable efforts to procure delivery thereof, in which case, such stock or equivalent certificate may instead be delivered within five (5) Business Days after the Effective Date (or such later date as the Administrative Agent may agree)) after the Borrower's use of commercially reasonable efforts to do so without undue burden or expense, then the provision and/or perfection, as applicable, of any such lien search and/or Collateral shall not constitute a condition precedent to the availability of the Loans hereunder, but may instead be provided within ninety days after the Effective Date, subject to such extensions as are reasonably agreed by the Administrative Agent, pursuant to arrangements to be mutually agreed by the parties hereto acting reasonably.

(g) Since the date of the Acquisition Agreement, there shall not have occurred any Company Material Adverse Effect.

(h) The Joint Lead Arrangers shall have received the Historical Audited Financial Statements, the Unaudited Financial Statements and the Pro Forma Financial Statements.

(i) All Specified Acquisition Agreement Representations and all Specified Representations shall, in each case, be true and correct in all material respects on the Effective Date (without duplication of any materiality qualifier therein).

(j) The Second Lien Term Loans shall be funded substantially concurrently with the initial funding of the Loans on the Effective Date.

(k) (i) The Equity Contribution and the Refinancing shall have been consummated, or substantially concurrently with the initial funding of Loans and the Second Lien Term Loans on the Effective Date, shall be consummated and (ii) the Acquisition shall have been consummated or, substantially concurrently with the initial funding of Loans and the Second Lien Term Loans on the Effective Date, shall be consummated pursuant to the Acquisition Agreement in all material respects and in accordance with applicable law (in all material respects and including that there shall be no order, injunction or decree of any governmental authority restraining or prohibiting the consummation of the Acquisition) without giving effect to any amendments to the Acquisition Agreement or waivers of or consents to the provisions thereof that, in any such case, are materially adverse to the interests of the Joint Lead Arrangers without the consent of the Joint Lead Arrangers, such consent not to be unreasonably withheld, conditioned or delayed and otherwise, in accordance with the terms of the Commitment Letter.

(l) The Administrative Agent shall have received a certificate from a Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions, substantially in the form of Exhibit P.

(m) The Administrative Agent and the Joint Lead Arrangers shall have received, at least three (3) Business Days prior to the Effective Date, all documentation and other information about the Loan Parties as shall have been reasonably requested in writing at least ten (10) Business Days prior to the Effective Date by the Administrative Agent or the Joint Lead Arrangers that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

#### SECTION 4.02 Each Credit Event.

The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of (i) the date of such



Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, as the case may be (without duplication of any other materiality qualifier); provided that, in each case, 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.

(b) (i) At the time of and immediately after giving effect to such Borrowing, or the issuance, amendment, renewal or extension of such Letter of Credit, as the case may be, or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, no Default or Event of Default shall have occurred and be continuing.

(c) The Administrative Agent and, if applicable, the relevant Issuing Bank or the Swing Line Lender, shall have received a Borrowing Request in accordance with the requirements hereof.

Each Borrowing Request (provided that a conversion or a continuation of a Borrowing shall not constitute a “Borrowing” for purposes of this Section 4.02), other than a Borrowing under any Incremental Facility or a Borrowing the proceeds of which are used to finance a Limited Condition Transaction, and each issuance, amendment, renewal or extension of a Letter of Credit (other than any issuance, amendment, renewal or extension of a Letter of Credit on the Effective Date) shall be deemed to constitute a representation and warranty by Holdings and the Borrower on (i) the date thereof or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, as to the matters specified in paragraphs (a) and (b) of this Section 4.02.

## ARTICLE V

### AFFIRMATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Lenders that:

#### SECTION 5.01 Financial Statements and Other Information.

Holdings or the Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) on or before the date that is one hundred (100) days (or one hundred and twenty (120) days in the case of the fiscal year ended December 31, 2017), after the end of each fiscal year of Holdings commencing with the fiscal year ended December 31, 2017, audited consolidated balance sheet and audited consolidated statements of income and retained earnings and statement of cash flows of Holdings and its Subsidiaries as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year and accompanied by any final management letters, customary management discussion and analysis, all reported on by an independent public accountant of recognized national standing

(without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant) or the impending maturity of any Indebtedness within the succeeding twelve months)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition as of the end of and for such year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ended June 30, 2017, on or before the date that is sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, unaudited consolidated balance sheet and unaudited consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and accompanied by customary management discussion and analysis, all certified by a Financial Officer as presenting fairly in all material respects the financial condition as of the end of and for such fiscal quarter and such portion of the fiscal year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a) and (b) above, the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(d) not later than five (5) days after any delivery of financial statements under paragraph (a) or (b) above, a Compliance Certificate signed by a Financial Officer (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations (A) demonstrating compliance with the Financial Performance Covenant to the extent required to be tested at such time (including a calculation of Consolidated EBITDA for such period with any applicable pro forma and other adjustments expressly contemplated to be included in such certificate pursuant to the other provisions of this Agreement), (B) in the case of financial statements delivered under paragraph (a) above and only to the extent the Borrower would be required to prepay Term Borrowings pursuant to Section 2.11(d), beginning with the financial statements for the fiscal year of Holdings ending December 31, 2018, of Excess Cash Flow for such fiscal year and (C) of the Available Amount then in effect.

(e) not later than one hundred (100) days after the end of each fiscal year of Holdings (or one hundred and twenty (120) days in the case of the fiscal year ended December 31, 2017), a detailed consolidated budget for Holdings and its Subsidiaries for the following fiscal year (including a projected consolidated balance sheet and consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget); provided that the

obligations of this paragraph shall be suspended upon and following the filing for an IPO; it being understood and agreed that any financial or business projections furnished by any Loan Party (i)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Loan Parties, (B) no assurance is given by the Loan Parties that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (ii) are not a guarantee of performance;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (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) filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or with any national securities exchange; and

(g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, as the Administrative Agent may reasonably request in writing, in each case subject to the limitations set forth below.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of Holdings and its Subsidiaries by furnishing (x) the applicable financial statements of any successor of Holdings, any Qualified Reporting Subsidiary or any Holdings Parent or (y) the Form 10-K or 10-Q (or the equivalent), as applicable, of Holdings (or any Holdings Parent or Qualified Reporting Subsidiary) filed with the SEC within the applicable time periods required by applicable law and regulations (including any extended deadlines available thereunder in connection with an IPO); provided that (i) to the extent such information relates to a Holdings Parent, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to Holdings and its Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 5.01(a), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant) or the impending maturity of any Indebtedness).

Documents required to be delivered pursuant to Section 5.01(a), (b) or (f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings’ or the Borrower’s website on the Internet at the website address listed on Schedule 9.01 (or otherwise notified pursuant to Section 9.01(d)); or (ii) on which such documents are posted on Holdings’ or the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the

Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings shall deliver paper copies of such documents to the Administrative Agent upon its reasonable request until a written notice to cease delivering paper copies is given by the Administrative Agent and (ii) Holdings shall notify the Administrative Agent (by fax or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

Notwithstanding anything to the contrary herein, neither Holdings nor any Subsidiary shall be required to deliver, disclose, permit the inspection, examination or making of copies of or excerpts from, or any discussion of, any document, information, or other matter (i) that constitutes a trade secret or proprietary information or (ii) any information to the extent that the provision thereof would violate any law, rule or regulation, fiduciary duty, binding agreement, or any obligation of confidentiality binding upon, or waive any privilege of, Holdings, any Subsidiary or any of their respective Affiliates; provided, that in the event that any Loan Party does not provide information in reliance on clause (ii) of this sentence, such Loan Party shall provide notice to the Administrative Agent that such information is being withheld to the extent such Loan Party is able to do so without violating the applicable obligation or waiving privilege and such Loan Party shall use its commercially reasonable efforts to communicate the applicable information in a way that would not violate the applicable obligation or risk waiver of such privilege; provided, further, that none of the foregoing shall be construed to limit any Loan Party's representations and warranties or any of the conditions, in any such case, set forth in this Agreement.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to the Borrower's or their Affiliates' securities. The Borrower hereby agrees that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (x) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (y) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Each Loan Party hereby acknowledges and agrees that, unless the Borrower notifies the Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 5.01(a), (b) and

(c) above are hereby deemed to be suitable for distribution, and to be made available, to all Lenders and may be treated by the Administrative Agent and the Lenders as not containing any Material Non-Public Information and all other information shall be assumed to contain Material Non-Public Information.

#### SECTION 5.02 Notices of Material Events.

Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

(a) the occurrence of any Default;

(b) to the extent permissible by Requirements of Law, the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings, the Borrower or any Subsidiary, affecting Holdings, the Borrower or any Subsidiary or the receipt of a written notice of an Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event or an increase in Unfunded Pension Liabilities (taking into account only Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given, in each case that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a written statement of a Responsible Officer of Holdings or the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

#### SECTION 5.03 Information Regarding Collateral.

(a) Holdings or the Borrower will furnish to the Administrative Agent promptly (and in any event within thirty (30) days after or such longer period as reasonably agreed to by the Administrative Agent) written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization or (iii) in any Loan Party's organizational identification number to the extent that such Loan Party is organized or owns Mortgaged Property in a jurisdiction where an organizational identification number is required to be included in a UCC financing statement for such jurisdiction.

(b) The Borrower shall provide in each Compliance Certificate delivered pursuant to Section 5.01(d) any changes, if any, to Schedule III to the Collateral Agreement as required to make such schedules accurate as of the last day of the fiscal quarter for which such Compliance Certificate is delivered.

#### SECTION 5.04 Existence; Conduct of Business.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, Intellectual Property and Governmental Approvals material to the conduct of its business, except to the extent (other than with respect to the preservation of the existence of Holdings and the Borrower) that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

#### SECTION 5.05 Payment of Taxes, etc.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, pay, discharge or otherwise satisfy all Taxes required to be paid by it, except where (a) the same are being contested in good faith by an appropriate proceeding diligently conducted by Holdings, the Borrower or any of their respective Subsidiaries or (b) the failure to make payment would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

#### SECTION 5.06 Maintenance of Properties.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition (casualty, condemnation and ordinary wear and tear excepted), except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the foregoing shall not prohibit any Disposition permitted by Section 6.05.

#### SECTION 5.07 Insurance.

(a) Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which Holdings believes (in the good faith judgment of management of Holdings) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as Holdings believes (in the good faith judgment of the management of Holdings) are reasonable and prudent in light of the size and nature of its business, and will furnish to the Lenders, upon written request from the Collateral Agent, information presented in reasonable detail as to the insurance so carried. The Borrower shall, and shall cause each Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia) to (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured as its interests may appear on each such general liability policy of insurance belonging to or insuring such Restricted Subsidiary (other than directors and officers policies, workers compensation policies and business interruption insurance) and (ii) in the case of each casualty insurance policy belonging to or insuring a Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia), include a loss payable clause or mortgagee endorsement that names the Collateral Agent, on behalf of the Secured Parties, as

the loss payee or mortgagee thereunder; provided that, unless an Event of Default shall have occurred and be continuing, (A) all proceeds from insurance policies shall be paid to Holdings, the Borrower or the applicable Restricted Subsidiary, (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by Holdings, the Borrower and/or its Subsidiaries, and (C) the Collateral Agent agrees that the Holdings, the Borrower and/or its Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(b) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) furnish to the Collateral Agent information presented in reasonable detail as to the flood insurance so carried.

#### SECTION 5.08 Books and Records; Inspection and Audit Rights.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to maintain proper books of record and account in which entries that are full, true and correct in all material respects in a manner to allow financial statements to be prepared in conformity with GAAP (or applicable local standards (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder)) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or the Restricted Subsidiaries, as the case may be. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its tangible properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default and such time shall be at the Borrower's expense; provided, further that (a) when an Event of Default exists, the Administrative Agent (or any of their respective 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 and (b) the Administrative Agent shall give Holdings and the Borrower the opportunity to participate in any discussions with Holdings' or the Borrower's independent public accountants.

SECTION 5.09 Compliance with Laws.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, comply with all Requirements of Law (including Environmental Laws and any permit, license, or approval thereunder, the FCPA, Sanctions and the USA PATRIOT Act) with respect to it, its property and operations, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.10 Use of Proceeds and Letters of Credit.

(a) The Borrower will use the proceeds of the Term Loans borrowed on the Effective Date and may use Revolving Loans drawn on the Effective Date, together with cash on hand of the Borrower and proceeds of the Second Lien Term Loans borrowed on the Effective Date to directly or indirectly finance the Transactions, directly or indirectly pay all or a portion of the Transaction Costs, to increase cash on hand, to replace, backstop or cash collateralize Existing Letters of Credit, and for other working capital purposes. The proceeds of the Revolving Loans and Swing Line Loans drawn after the Effective Date will be used only for general corporate purposes, and the Letters of Credit will be used only for general corporate purposes, in each case, including capital expenditures, Permitted Acquisitions, Investments, Restricted Payments, refinancing of Indebtedness and any other transactions not prohibited by this Agreement.

(b) The Borrower will not directly or, to its knowledge, indirectly use the proceeds of any Loan in violation of Sanctions, the USA PATRIOT Act, the FCPA or any other applicable anti-corruption law.

SECTION 5.11 Additional Collateral; Additional Guarantors.

(a) If (i) any additional Restricted Subsidiary organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia), is formed or acquired after the Effective Date, (ii) any Restricted Subsidiary ceases to be an Excluded Subsidiary or (iii) the Borrower, at its option, elects to cause a Subsidiary of Holdings organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia) that is not a Wholly Owned Subsidiary (including any consolidated Affiliate in which the Borrower and their respective Subsidiaries own no Equity Interest) to become a Subsidiary Loan Party upon such election, then Holdings or the Borrower will within ninety (90) days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after (x) such newly formed or acquired Restricted Subsidiary is formed or acquired (unless such Restricted Subsidiary is an Excluded Subsidiary), (y) such Restricted Subsidiary ceases to be an Excluded Subsidiary or (z) the Borrower has made such election, cause such Restricted Subsidiary (unless such Restricted Subsidiary is an Excluded Subsidiary) to satisfy the Collateral and Guarantee Requirement with respect to such Restricted Subsidiary and with respect to any Equity Interest in or Indebtedness of such Restricted Subsidiary owned by or on behalf of any Loan Party.

(b) Notwithstanding the foregoing, in the event any real property would be required to be mortgaged pursuant to this Section 5.11, Holdings and the Borrower shall be required to comply with the "Collateral and Guarantee Requirement" as it relates to such real



property within ninety (90) days following the formation or acquisition of such real property or such Restricted Subsidiary or the identification of such new Material Subsidiary, or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

**SECTION 5.12 Further Assurances.**

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) Subject, in each case, to the limitations set forth in the Security Documents, if, after the Effective Date, any material assets (other than Excluded Assets), including any Material Real Property, are acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that become subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section but only as and to the extent required pursuant to the "Collateral and Guarantee Requirement", all at the expense of the Loan Parties and subject to the last paragraph in the definition of the term "Collateral and Guarantee Requirement". In the event any Material Real Property is mortgaged pursuant to this Section 5.12(b), the Borrower or such other Loan Party, as applicable, shall be required to comply with the "Collateral and Guarantee Requirement" and paragraph (a) of this Section 5.12 within ninety (90) days following the acquisition of such Material Real Property or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

**SECTION 5.13 Designation of Subsidiaries.** (a) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately after such designation on a Pro Forma Basis, no Event of Default shall have occurred and be continuing, (ii) any Unrestricted Subsidiary shall also be designated an Unrestricted Subsidiary under (x) the Second Lien Credit Agreement and (y) any other Junior Financing constituting Material Indebtedness, (iii) Unrestricted Subsidiaries shall not account for more than 5% of Consolidated EBITDA or 5% of total assets of Holdings and its Restricted Subsidiaries determined at the time of designation of such Unrestricted Subsidiary and (iv) no Subsidiary that owns Intellectual Property that is material to the businesses of the other Loan Parties, taken as a whole, may be designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings' or its respective subsidiaries' (as

applicable) investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, of Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by Holdings in such Unrestricted Subsidiary pursuant to the preceding sentence in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings' or its Subsidiaries' (as applicable) Investment in such Subsidiary.

(b) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary that is an Excluded Subsidiary as an Electing Guarantor or Electing Guarantor as an Excluded Subsidiary; provided that any Electing Guarantor shall also be designated an Electing Guarantor under the Second Lien Credit Agreement. Pursuant to the definition of "Electing Guarantor", the Borrower may at its option cause any Subsidiary to, execute a supplement to each of the Guarantee Agreement and the Collateral Agreement in order to become a Loan Guarantor under the Guarantee Agreement and a grantor under such Security Documents, respectively, or, to the extent reasonably requested by the Collateral Agent, enter into an appropriate new guarantee and appropriate new Security Documents substantially consistent with the analogous existing Guarantee Agreement and Security Documents or otherwise in form and substance reasonably satisfactory to Borrower and Collateral Agent and take all other action reasonably requested by the Collateral Agent to grant a perfected (with respect to Collateral consisting of Intellectual Property, if and to the extent required under the Collateral Agreement) security interest in its assets to substantially the same extent as created by the Loan Parties and only if and to the extent required under, and in accordance with, the Security Documents. The designation of any Subsidiary as an Electing Guarantor after the Effective Date shall constitute a return on any Investment by Holdings or any Restricted Subsidiary in such Subsidiary in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings' or its Restricted Subsidiaries' (as applicable) Investment in such Subsidiary. The designation of any Electing Guarantor as an Excluded Subsidiary shall constitute (i) an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings' or it or its respective Restricted Subsidiaries' (as applicable) Investment therein and (ii) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time.

SECTION 5.14 Certain Post-Closing Obligations. As promptly as practicable, and in any event within the time periods after the Effective Date specified in Schedule 5.14 or such later date as the Administrative Agent agrees to in writing in its reasonable discretion, including to reasonably accommodate circumstances unforeseen on the Effective Date, Holdings, the Borrower and each other Loan Party shall deliver the documents or take the actions specified on Schedule 5.14 that would have been required to be delivered or taken on the Effective Date, in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term "Collateral and Guarantee Requirement".

SECTION 5.15 Maintenance of Rating of Facilities. The Loan Parties shall use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any particular rating) from S&P and a public corporate family rating (but not any particular rating) from Moody's, in each case in respect of the Borrower and (ii) a public rating (but not any particular rating) in respect of the Initial Term Loans from each of S&P and Moody's.

SECTION 5.16 Lines of Business. Holdings and its Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, corollary, synergistic, reasonably related or ancillary to any of the foregoing.

SECTION 5.17 Fiscal Periods. Holdings will keep its current fiscal year; provided, however, that Holdings may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, 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 5.18 Lender Calls. Following delivery of the financial statements pursuant to each of Sections 5.01(a) and (b), at the reasonable request of the Administrative Agent, Holdings will host a conference call, at a time selected by Holdings and reasonably acceptable to the Administrative Agent, with the Lenders to review the financial information provided, in each case, therein.

## ARTICLE VI

### NEGATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Lenders that:

#### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Borrower and any of the Restricted Subsidiaries under the Loan Documents (including any Indebtedness incurred pursuant to Section 2.20 or 2.21);

(ii) Indebtedness, including intercompany Indebtedness, outstanding on the Effective Date; provided that any Indebtedness in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.01 (unless such Indebtedness is permitted by another clause in this Section 6.01), and any Permitted Refinancing thereof;

(iii) Guarantees by Holdings, the Borrower and any of the Restricted Subsidiaries in respect of Indebtedness of Holdings, the Borrower or any Restricted Subsidiary otherwise permitted hereunder; provided that (A) such Guarantee is permitted under Section 6.04 (other than Section 6.04(u)), (B) no Guarantee by any Restricted Subsidiary of the Second Lien Term Loans or any other Junior Financing or Indebtedness that is unsecured and incurred under Section 6.01(a)(xv) shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Loan Document Obligations pursuant to the Guarantee Agreement and (C) if the Indebtedness being

Guaranteed is subordinated to the Loan Document Obligations, such Guarantee shall be subordinated to the Guarantee of the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(iv) Indebtedness of (x) Holdings owing to the Borrower or any other Restricted Subsidiary, (y) the Borrower owing to Holdings or any Restricted Subsidiary or (z) any Restricted Subsidiary owing to any other Restricted Subsidiary, Holdings or the Borrower, in each case, to the extent permitted by Section 6.04; provided that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be subordinated to the Loan Document Obligations (to the extent any such Indebtedness is outstanding at any time after the date that is thirty (30) days after the Effective Date or such later date as the Administrative Agent may reasonably agree) (but only to the extent permitted by applicable law and not giving rise to adverse tax consequences (that are not de minimis)) on terms (i) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit F or (ii) otherwise reasonably satisfactory to the Administrative Agent;

(v) (A) Indebtedness (including Capital Lease Obligations and purchase money Indebtedness) incurred, issued or assumed by Holdings, the Borrower or any Restricted Subsidiary to finance the acquisition, purchase, lease, construction, repair, replacement or improvement of fixed or capital property, equipment or other assets; provided that such Indebtedness is incurred concurrently with or within 270 days after the applicable acquisition, purchase, lease, construction, repair, replacement or improvement, and (B) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clause (A) (or successive Permitted Refinancings thereof); provided, further, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed the greater of (A) \$22,500,000 and (B) 22.5% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(vi) Indebtedness in respect of Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(vii) (a) Indebtedness (1) of any Person acquired in connection with a Permitted Acquisition or permitted Investment or secured by any assets so acquired (and not incurred by the obligor thereon in contemplation of such Permitted Acquisition or permitted Investment) and (2) of any Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary (it being acknowledged that (x) a Person that becomes a direct or indirect Restricted Subsidiary of Holdings as a result of a Permitted Acquisition or permitted Investment may remain liable with respect to Indebtedness existing on the date of such acquisition (and not incurred in contemplation thereof) and (y) an Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary may remain liable with respect to Indebtedness existing on the date of such redesignation (and not incurred in contemplation thereof)); provided that at the time of incurrence, immediately after giving effect to such Permitted Acquisition, permitted Investment or redesignation, as the case may be, and the assumption of such Indebtedness, the Total Net Leverage Ratio computed

on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00; and (b) in respect of the foregoing, any Permitted Refinancing thereof; provided, further, that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (vii) at the time of incurrence of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(viii) Indebtedness (a) to the seller of any business or assets acquired by Holdings or any Restricted Subsidiary in a transaction permitted hereunder (including Indebtedness to finance the payment of earnout obligations owing to such seller as a result of such transaction to the extent they become a liability on the consolidated balance sheet of Holdings and its Restricted Subsidiaries in accordance with GAAP, provided that (1) the Total Net Leverage Ratio computed on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00 and (2) if the primary obligor of such earnout is a Restricted Subsidiary that is not a Loan Party, the amount of such earnout shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time) or (b) indemnification obligations, obligations in respect of purchase price adjustments, incentive non-competes and other similar contingent obligations of deferred compensation incurred or assumed in connection with any Permitted Acquisition, any other Investment or any Disposition, in each case, permitted under this Agreement;

(ix) [reserved];

(x) [reserved];

(xi) Settlement Indebtedness;

(xii) Indebtedness in respect of (a) bankers' acceptances, discounted bills of exchange or discounting or factoring of receivables for credit management purposes incurred or undertaken in the ordinary course of business on arm's length commercial terms on a non-recourse basis and (b) Cash Management Obligations and other Indebtedness in respect of netting services, automated clearinghouse arrangements, overdraft protections and similar arrangements, in each case, in connection with securities or deposit accounts or from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiii) [reserved];

(xiv) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary after the Effective Date (or of any Person not previously a Restricted Subsidiary that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary); provided that,

at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$40,000,000;

(xv) (A) unsecured Indebtedness of Holdings, the Borrower or any Subsidiary Loan Party or any Person that becomes a Loan Party after the Effective Date (or of any Person not previously a Subsidiary Loan Party that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary so long as such Restricted Subsidiary becomes a Subsidiary Loan Party); provided that after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, such amount shall not exceed the sum of (I) (x) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case, incurred pursuant to clause (I)(a) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(x) of this Section 6.01(a)(xv) or of Section 6.01(a)(xvi) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(a) of the definition of “Incremental Cap” in the Second Lien Credit Agreement or clause (A)(I)(x) of Section 6.01(a)(xv) or clause (A)(I)(x) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (y) the Voluntary Prepayment Amount (less (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(b) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(y) of this Section 6.01(a)(xv) or of Section 6.01(a)(xvi) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(b) of the definition of “Incremental Cap” in the First Lien Credit Agreement or clause (A)(I)(y) of Section 6.01(a)(xv) or clause (A)(I)(y) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (II) the maximum aggregate principal amount that can be incurred without causing the Total Net Leverage Ratio, on a Pro Forma Basis, to exceed 6.75 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Total Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established under this clause (xv), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower’s ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of “Pro Forma Basis” shall not be limited) and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A) so long as the obligors thereon do not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party; provided, further, that such Indebtedness complies with clauses (a), (b), (c), (d) and (f) of the definition of “Required Additional Debt Terms”; provided, further, that (x) Indebtedness may be incurred under both clauses (I) and (II), and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (II) above and then calculating the incurrence under clause (I)(y) and then calculating the incurrence under clause (I)(x) above) (if any) and, for the avoidance of doubt, the Total Net Leverage Ratio shall be permitted to exceed the maximum ratio set forth in clause (II) above to the

extent of such amounts incurred in reliance on clause (I) at substantially the same time and (y) Indebtedness incurred pursuant to this clause (xv) by a non-Loan Party, together with Indebtedness incurred pursuant to clause (xvi) by a non-Loan Party, shall not exceed \$10,000,000 in the aggregate at any time outstanding;

(xvi) (A) Indebtedness of Holdings, the Borrower or any Subsidiary Loan Party or any Person that becomes a Subsidiary Loan Party after the Effective Date (or of any Person not previously a Subsidiary Loan Party that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Subsidiary Loan Party including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary so long as such Restricted Subsidiary becomes a Subsidiary Loan Party) that is secured on a pari passu or junior basis to the Initial Term Loans and the agent for such Indebtedness has become a party to the applicable Intercreditor Agreement; provided that after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, such amount shall not exceed the sum of (I) (x) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(a) of the definition of "Incremental Cap", (y) all amounts previously incurred pursuant to clause (A)(I)(x) of this Section 6.01(a)(xvi) or of Section 6.01(a)(xv) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(a) of the definition of "Incremental Cap" in the Second Lien Credit Agreement or clause (A)(I)(x) of Section 6.01(a)(xvi) or Section 6.01(a)(xv) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (y) the Voluntary Prepayment Amount (less (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(b) of the definition of "Incremental Cap", (y) all amounts previously incurred pursuant to clause (A)(I)(y) of this Section 6.01(a)(xvi) or of Section 6.01(a)(xv)) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred on reliance on clause (I)(b) of the definition of "Incremental Cap" in the Second Lien Credit Agreement or clause (A)(I)(y) of Section 6.01(a)(xvi) or of Section 6.01(a)(xv) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (II) in the case of Indebtedness secured on a pari passu basis with the Initial Term Loans, the maximum aggregate principal amount that can be incurred without causing the Senior Secured First Lien Net Leverage Ratio, on a Pro Forma Basis, to exceed 5.00 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Senior Secured First Lien Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established under this clause (xvi), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower's ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of "Pro Forma Basis" shall not be limited) plus (III) in the case of Indebtedness secured on a junior basis to the Initial Term Loans, the maximum aggregate principal amount that can be incurred without causing the Senior Secured Net Leverage Ratio, on a Pro Forma Basis, to exceed 6.75 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Senior Secured Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established

under this clause (xvi), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower's ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of "Pro Forma Basis" shall not be limited)), and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A) so long as the obligors thereon do not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party; provided, further, that such Indebtedness complies with clauses (a), (b), (c), (d), (e), (f) and, to the extent applicable, (g) of the definition of "Required Additional Debt Terms"; provided, further, that (x) Indebtedness may be incurred under both clauses (I) and (II) or clauses (I) and (III) and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (I)(y) above and then calculating the incurrence under clauses (II) or (III) above, as applicable, and then calculating the incurrence under clause (I)(x) above) (if any) and, for the avoidance of doubt, the Senior Secured First Lien Net Leverage Ratio or Senior Secured Net Leverage Ratio, as applicable, shall be permitted to exceed the maximum ratio set forth in clause (II) or (III) above to the extent of such amounts incurred in reliance on clause (I) at substantially the same time and (y) Indebtedness incurred pursuant to this clause (xvi) by a non-Loan Party, together with Indebtedness incurred pursuant to clause (xv) by a non-Loan Party, shall not exceed \$10,000,000 in the aggregate at any time outstanding;

(xvii) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary in an aggregate principal amount not greater than the Available Equity Amount that is Not Otherwise Applied at the time of incurrence;

(xviii) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case of the foregoing clauses (A) and (B), in the ordinary course of business;

(xix) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(xx) Indebtedness of the Borrower (and any Guarantee thereof by any Loan Party), incurred in respect of:

- (i) any Second Lien Term Loans and Second Lien Permitted Incremental Equivalent Debt in an aggregate principal amount outstanding at any time not to exceed (x) \$185,000,000 plus (y) the aggregate principal amount of Indebtedness that is outstanding or that would be permitted to be incurred as an "Incremental Facility" under and as defined in the Second Lien Credit Agreement as in effect on the date hereof (or, in each case, pursuant to any corresponding provision in any Permitted Refinancing thereof to the extent such corresponding provision does not permit an aggregate principal amount of Indebtedness in excess of an amount permitted under the Second Lien Credit Agreement (as in effect on the Effective Date)), and



(ii) any Permitted Refinancing thereof so long as the aggregate principal amount of Indebtedness does not exceed the aggregate principal amount of Indebtedness being refinanced, plus (1) an amount equal to unpaid accrued interest and premiums (including tender premiums) thereon, plus (2) the amount of any underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant Permitted Refinancing, plus (3) an amount equal to any existing commitments unutilized thereunder, plus (4) any additional principal amount of Indebtedness in connection with such Permitted Refinancing (without giving effect to the proviso in clause (a) of the definition thereof) to the extent such principal amount constitutes Credit Agreement Refinancing Indebtedness (as defined in the Second Lien Credit Agreement as in effect on the Effective Date), but only to the extent the amount of such refinancing exceeds the refinanced Indebtedness in accordance with the Second Lien Credit Agreement as in effect at the Effective Date)), provided that, in the case of any Permitted Refinancing, the obligors thereon shall not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party;

(xxi) Permitted Unsecured Refinancing Debt, and any Permitted Refinancing thereof; provided that (A) in the case of any Permitted Unsecured Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt, the obligor thereon shall be the Borrower and (B) in the case of any Permitted Refinancing of any Permitted Unsecured Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party; provided, further, that in the case of any Permitted Unsecured Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt (or any Permitted Refinancing thereof), such Indebtedness shall comply with clauses (c) and (e) of the definition of “Credit Agreement Refinancing Indebtedness”;

(xxii) Permitted First Priority Refinancing Debt and Permitted Junior Priority Refinancing Debt, and any Permitted Refinancing of any of the foregoing; provided that (A) in the case of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt, the obligor thereon shall be the Borrower and (B) in the case of any Permitted Refinancing of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party; provided, further, that in the case of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt (or any Permitted Refinancing thereof), such Indebtedness shall comply with clauses (c), (d) and (e) of the definition of “Credit Agreement Refinancing Indebtedness”;

(xxiii) Indebtedness of the Borrower issued in lieu of Incremental Facilities (and including, for the avoidance of doubt, if applicable, any such Indebtedness that is also issued in lieu of “Incremental Facilities” as defined in the Second Lien Credit Agreement) consisting of one or more series of secured or unsecured loans, bonds, notes or debentures (which loans, bonds, notes or debentures, if secured, may be secured either

by Liens pari passu with the Liens on the Collateral securing the Initial Term Loans (but without regard to control of remedies) or by Liens having a junior priority relative to the Liens on the Collateral securing the Initial Term Loans) (and any Registered Equivalent Notes issued in exchange therefor) (the “Incremental Equivalent Debt”); provided that (x) the aggregate principal amount of all such Indebtedness incurred pursuant to this clause (xxiii) shall not exceed, at the time of incurrence, the Incremental Cap at such time, and (y) such Indebtedness complies with the provisions of the Required Additional Debt Terms;

(xxiv) Indebtedness of any Restricted Subsidiary that is not a Loan Party in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$20,000,000 and (B) 20% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(xxv) Indebtedness incurred by Holdings, the Borrower or any Restricted Subsidiary in respect of letters of credit, bank guarantees, warehouse receipts, bankers’ acceptances or similar instruments issued or created in the ordinary course of business or consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other indemnification or reimbursement-type obligations;

(xxvi) obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Holdings, 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 past practice;

(xxvii) Indebtedness representing deferred compensation or stock-based compensation owed to employees of Holdings, the Borrower or the Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice;

(xxviii) Indebtedness consisting of unsecured promissory notes issued by Holdings, the Borrower or any Restricted Subsidiary to future, current or former officers, directors, employees, managers and consultants or their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of Holdings (or any Holdings Parent) to the extent permitted by Section 6.07(a)(v);

(xxix) Indebtedness incurred in connection with a Qualified Securitization Facility;

(xxx) Indebtedness of any Restricted Subsidiary that is a joint venture in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(xxxi) endorsement of instruments or other payment items for deposit in the ordinary course of business;

(xxxii) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Restricted Subsidiaries;

(xxxiii) performance Guarantees of Holdings and the Restricted Subsidiaries primarily guaranteeing performance of contractual obligations of Holdings or Restricted Subsidiaries to a third party and not primarily for the purpose of guaranteeing payment of Indebtedness;

(xxxiv) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of Holdings to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States; and

(xxxv) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxiv) above.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, issue any Disqualified Equity Interests, except (x) to the extent incurred as Indebtedness under Section 6.01(a) and (y) (i) preferred Equity Interests issued to and held by Holdings, the Borrower or any Restricted Subsidiary to the extent permitted by Section 6.04, and (ii) preferred Equity Interests issued to and held by joint venture partners after the Effective Date; provided that in the case of this clause (ii) any such issuance of preferred Equity Interests shall be deemed to have been incurred Indebtedness and subject to the provisions set forth in Section 6.01(a) and (b).

For purposes of determining compliance with this Section 6.01, (i) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Indebtedness described in clauses (a)(i) through (a)(xxxv) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; provided that (i) all Indebtedness outstanding under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (a)(i), (ii) all Indebtedness outstanding under the Second Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (a)(xx)(A) and (iii) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Indebtedness that was not permitted to be incurred at the initial incurrence thereof.

For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness

was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness).

#### SECTION 6.02 Liens.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned (but not leased) or hereafter acquired (but not leased) by it, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Encumbrances;

(iii) Liens existing on the Effective Date; provided that any Lien securing Indebtedness or other obligations in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.02 (unless such Lien is permitted by another clause in this Section 6.02) and any modifications, replacements, renewals or extensions thereof; provided, further, that such modified, replacement, renewal or extension Lien does not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); provided that (A) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for replacements, additions, accessions and improvements to such property and the proceeds and the products thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for replacements, additions, accessions and improvements to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; provided, further, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) (i) easements, leases, licenses, subleases or sublicenses granted to others (including licenses and sublicenses of Intellectual Property) in the ordinary course

of business that do not (A) interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole, or (B) secure any Indebtedness and (ii) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease or license entered into by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of its business or consistent with past practice;

(vi) 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;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (B) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or (C) in favor of a banking or other financial institution or entity, or electronic payment service provider, arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking or finance industry;

(viii) Liens (A) on cash advances, cash earnest money deposits or other escrow deposits in connection with any Investment permitted pursuant to Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) Liens on property or other assets of any Restricted Subsidiary that is not a Loan Party, which Liens secure Indebtedness of such Restricted Subsidiary or another Restricted Subsidiary that is not a Loan Party, in each case permitted under Section 6.01(a);

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any other Restricted Subsidiary and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) Liens existing on property or other assets at the time of its acquisition or existing on the property or other assets of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date and any modifications, replacements, renewals or extensions thereof; provided that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary and (B) such Lien does not extend to or cover any other assets or property (other than any replacements of such property or assets and additions and accessions thereto, the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, and proceeds or products thereof and, in the case of multiple equipment financings provided by any lender, other equipment financed by such lender);

(xii) Liens on cash, Permitted Investments or other marketable securities securing Letters of Credit of any Loan Party that are cash collateralized on the Effective Date in an amount of cash, cash equivalents or other marketable securities with a fair market value of up to 105% of the face amount of such Letters of Credit being secured;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term “Permitted Investments”;

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries or (B) relating to purchase orders and other agreements entered into with customers of Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xvii) ground leases in respect of real property on which facilities owned or leased by Holdings, the Borrower or any of the Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Liens on the Collateral securing Indebtedness and other obligations permitted under Section 6.01(a)(xvi), Section 6.01(a)(xx), Section 6.01(a)(xxii) or Section 6.01(a)(xxiii); provided that (A) such Liens securing Indebtedness permitted under Section 6.01(a)(xx) and 6.01(a)(xx)(ii) (solely in the case of Permitted Junior Priority Refinancing Debt) shall be junior to the Liens on the Collateral securing the Initial Term Loans pursuant to the Closing Date Intercreditor Agreement and (B) in all cases such Liens shall be subject to the applicable Intercreditor Agreement;

(xx) [reserved];

(xxi) Settlement Liens;

(xxii) Liens securing Indebtedness permitted under Section 6.01(a)(viii) or (xvi);

(xxiii) Liens on assets of any Restricted Subsidiary that is not a Loan Party (x) securing working capital lines in foreign jurisdictions and/or (y) securing other obligations, in each case to the extent such Indebtedness is permitted by Section 6.01;

- (xxiv) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; provided such satisfaction or discharge is permitted hereunder;
- (xxv) Receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;
- (xxvi) Liens on Equity Interests of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;
- (xxvii) [reserved];
- (xxviii) other Liens; provided that, at the time of the granting thereof and after giving Pro Forma Effect thereto, the aggregate amount of obligations secured by all Liens incurred in reliance on this clause (xxviii) shall not exceed \$30,000,000 (provided that, with respect to any such obligation, the amount of such obligation shall be the lesser of (x) the outstanding face amount of such obligation and (y) the fair market value of the assets securing such obligation);
- (xxix) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;
- (xxx) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters for 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;
- (xxxi) Liens of bailees arising as a matter of law or pursuant to the standard terms of agreement of such bailee in the ordinary course of business; provided that such Liens shall extend only to the assets subject to such bailment;
- (xxxii) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of Holdings and its Subsidiaries;
- (xxxiii) utility and similar deposits in the ordinary course of business;
- (xxxiv) purchase options, call and similar rights of, and restrictions for the benefit of, a third party with respect to Equity Interests held by Holdings or any Restricted Subsidiary in Joint Ventures;
- (xxxv) Liens in favor of Holdings or a Loan Party arising in connection with Intercompany License Agreements;
- (xxxvi) Liens on cash or Permitted Investments securing any Swap Agreement (or any obligations in respect of the clearing thereof) so long as the fair market

value of the assets securing such Swap Agreement does not exceed the greater of (A) \$7,500,000 and (B) 7.5% of Consolidated EBITDA for the Test Period then last ended at any time;

(xxxvii) without duplication of any other permitted Lien item under this Section 6.02, minor survey exceptions, minor encumbrances, ground leases, easements, or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines, and other similar purposes, or zoning, building codes, or other restrictions (including, without limitation, 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 a Loan Party or to the ownership of its properties which were not incurred in connection with Indebtedness for borrowed money and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Loan Party;

(xxxviii) restrictive covenants affecting the use to which real property may be put; provided that such covenants are complied with;

(xxxix) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; and

(xl) any Lien resulting from the rules and regulations of any clearing system or stock exchange over shares and/or other securities held in that clearing system or stock exchange.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxxviii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; provided that (x) all Liens created under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (i), (y) all Liens created under the Second Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (xix) and (z) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Lien that was not permitted to be incurred at the initial incurrence thereof.

#### SECTION 6.03 Fundamental Changes; Holdings Covenant.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or liquidate or dissolve (which, for the avoidance of doubt, shall not restrict Holdings, the Borrower or any Restricted Subsidiary from changing its organizational form), except that:



(i) any Restricted Subsidiary (other than the Borrower) may merge, amalgamate or consolidate with (A) the Borrower or Holdings; provided that the Borrower or Holdings shall be the continuing or surviving Person, or (B) any one or more Restricted Subsidiaries (other than the Borrower); provided, further, that when any Subsidiary Loan Party is merging, amalgamating or consolidating with another Restricted Subsidiary (1) the continuing or surviving Person shall be a Subsidiary Loan Party or the Borrower or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is otherwise permitted under Section 6.04;

(ii) (A) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any Restricted Subsidiary that is not a Loan Party and (B) (x) any Restricted Subsidiary (other than the Borrower) may liquidate or dissolve and (y) any Restricted Subsidiary may change its legal or organizational form if the Borrower determines in good faith that such action is in the best interests of Holdings and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary (other than the Borrower) may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Holdings, the Borrower or another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(iv) the Borrower may merge, amalgamate 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 Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower or is a Person into which the Borrower has been liquidated (or, in connection with a Disposition of all or substantially all of the Borrower's assets, if the transferee of such assets) (any such Person, the "Successor Borrower"), (1) the Successor Borrower shall be an entity organized or existing under the laws of the United States (or any state thereof), (2) the Successor Borrower shall expressly assume all of 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 and substance reasonably satisfactory to the Administrative Agent, (3) each Loan Party other than the Borrower, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Borrower's obligations under this Agreement and (4) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower stating that such merger, amalgamation or consolidation complies with this

Agreement; provided, further, that (y) if such Person is not a Loan Party, no Event of Default (or, to the extent related to a Permitted Acquisition or any Investment not prohibited by Section 6.04, no Specified Event of Default) shall exist after giving effect to such merger, amalgamation or consolidation and (z) if the foregoing requirements are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents; provided, further, that (A) the Borrower shall have provided any documentation and other information about the Successor Borrower to the extent reasonably requested in writing promptly, and in any case within one (1) Business Day following the delivery of the certificate in clause (4), by any Lender or Issuing Bank through the Administrative Agent, or by the Administrative Agent, that such Lender, Issuing Bank or Administrative Agent, as applicable, shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including Title III of the USA PATRIOT Act and (B) such Lender, Issuing Bank or Administrative Agent, as applicable, shall be reasonably satisfied that its review of such documentation and information requested and delivered pursuant to clause (A) complies with such applicable “know your customer” and anti-money laundering rules and regulations (provided that for the avoidance of doubt, the Borrower’s failure to deliver information requested after the first Business Day following delivery of the certificate in clause (4) above shall not constitute a Default or an Event of Default under this Agreement or the Loan Documents);

(v) any Restricted Subsidiary (other than the Borrower) may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; provided that the continuing or surviving Person shall be the Borrower or a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12;

(vi) Holdings, the Borrower and the Restricted Subsidiaries may consummate the Transactions and any Permitted Reorganization; and

(vii) any Restricted Subsidiary (other than the Borrower) may effect a merger, amalgamation, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05.

(b) Holdings will not conduct, transact or otherwise engage in any business or operations other than (i) the ownership and/or acquisition of the Equity Interests or debt interests of the Borrower and any other Subsidiary, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters, (iv) the performance of its obligations under and in connection with (w) the Loan Documents, (x) the Second Lien Loan Documents, (y) any documentation governing any other Indebtedness or Guarantee permitted hereunder and (z) any Permitted Reorganization, (v) any public offering of its or any of its direct or indirect parent’s common stock or any other issuance or registration of its Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, (vi) making any dividend or distribution or other transaction similar to a Restricted Payment and not otherwise prohibited by Section 6.08, or any Investment in the Borrower or any other Person permitted under Section 6.04, (vii) the incurrence of any Indebtedness permitted under Section 6.01, (viii) incurring

fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (ix) providing indemnification to officers and members of the Board of Directors, (x) activities incidental to the consummation of the Transactions and (xi) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made and purchases of assets in the ordinary course of business consistent with past practice;

(b) loans or advances to officers, members of the Board of Directors and employees of Holdings, the Borrower and the Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof) (provided that the amount of such loans and advances made in cash to such Person shall be contributed to Holdings in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding at any time not to exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended;

(c) Investments by Holdings in the Borrower or any Restricted Subsidiary, Investments by the Borrower in Holdings or any Restricted Subsidiary and Investments by any Restricted Subsidiary in Holdings, the Borrower or any other Restricted Subsidiary; provided that, Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties shall not exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended in the aggregate at the time of making any such Investment;

(d) Investments consisting of extensions of trade credit and accommodation guarantees in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 6.04 and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the Effective Date by Holdings, the Borrower or any Restricted Subsidiary in Holdings, the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; provided that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04 or as otherwise permitted by this Section 6.04;

(f) Investments in Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(h) Investments constituting Permitted Acquisitions, provided that the aggregate amount of any such Investment, as valued at the fair market value at the time such Investment is made, made by a Loan Party in a Restricted Subsidiary that shall not be a Loan Party after giving effect to such Permitted Acquisition shall not exceed the greater of (A) \$30,000,000 and (B) 30% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;

(i) the Transactions;

(j) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers in the ordinary course of business;

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(l) loans and advances to any Holdings Parent (x) 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 to such Holdings Parent in accordance with Section 6.07(a) (other than Section 6.07(a)(xvii)(2)) with such Investment being treated for purposes of the applicable clauses of Section 6.07(a), including any limitations, as a Restricted Payment made pursuant to such clause, and (y) to the extent the proceeds thereof are contributed or loaned or advanced to Holdings or a Restricted Subsidiary;

(m) additional Investments and other acquisitions; provided that at the time any such Investment or other acquisition is made, the aggregate outstanding amount of such Investment or acquisition made in reliance on this clause (m), together with the aggregate amount of all consideration paid in connection with all other Investments and acquisitions made in reliance on this clause (m) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other Investment or acquisition previously made under this clause (m)), shall not exceed (i) \$35,000,000 plus (ii) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment, plus (iii) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment plus (iv) an unlimited amount so long as on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.75 to 1.00 for the most recently ended Test Period as of such time;

(n) advances of payroll payments to employees in the ordinary course of business;

(o) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as Cure Amounts and Qualified Equity Interests that are applied pursuant to the Available Amount or the Available Equity Amount) of Holdings or any Holdings Parent;

(p) Investments of a Subsidiary acquired after the Effective Date or of a Person merged, amalgamated or consolidated with any Subsidiary in accordance with this Section 6.04 and Section 6.03 after the Effective Date or that otherwise becomes a Subsidiary (provided that if such Investment is made under Section 6.04(h), existing Investments in subsidiaries of such Subsidiary or Person shall comply with the requirements of Section 6.04(h)) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(q) receivables owing to Holdings, the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(r) Investments (A) for utilities, security deposits, leases and similar prepaid expenses incurred in the ordinary course of business and (B) trade accounts created, or prepaid expenses accrued, in the ordinary course of business;

(s) any Permitted Reorganization and any Investments in connection therewith;

(t) [reserved];

(u) Investments consisting of Indebtedness, Liens, fundamental changes, Dispositions and Restricted Payments permitted (other than by reference to this Section 6.04(u)) under Sections 6.01, 6.02, 6.03, 6.05 (other than Section 6.05(e)(i)) and 6.07, respectively;

(v) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of Holdings or the Borrower;

(w) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case in the ordinary course of business;

(x) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities, in each case, arising in the ordinary course of business;

(y) Investments made by an Unrestricted Subsidiary (other than Investments made with the proceeds of Investments made in reliance on Section 6.04(bb)) prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”;

(z) 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 or any repurchase obligation in connection therewith, including, without limitation, Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Facilities or any related Indebtedness;

(aa) Investments in the ordinary course of business in connection with Settlements;

(bb) Investments in any Unrestricted Subsidiaries, joint ventures and Persons which do not become Loan Parties as a result of such Investment in an amount not to exceed the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;

(cc) [reserved];

(dd) asset purchases (including purchases of inventory, supplies and materials) and the granting of non-exclusive licenses or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;

(ee) [reserved];

(ff) Investments in connection with Intercompany License Agreements;

(gg) Investments consisting of cash earnest money deposits permitted pursuant to Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition);

(hh) to the extent that the exchange of cash by the Borrower or any other Restricted Subsidiary for the provision of services in the ordinary course of business by a Restricted Subsidiary constitutes an Investment, the payment for such provision of services or provision of such services; and

(ii) Any Discounted Term Loan Prepayment or other Term Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04 and any Discounted Term Loan Prepayment (as defined in the Second Lien Credit Agreement) or other Second Lien Term Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04 of the Second Lien Credit Agreement (for any comparable provision of a Permitted Refinancing thereof), so long as such loans are immediately cancelled.

For the avoidance of doubt, if an Investment would be permitted under any provision of this Section 6.04 (other than Section 6.04(h)) and as a Permitted Acquisition, such Investment need not satisfy the requirements otherwise applicable to a Permitted Acquisition unless such Investments are consummated in reliance on Section 6.04(h). In addition, to the extent an Investment is permitted to be made by Holdings or a Restricted Subsidiary directly in any Restricted Subsidiary or any other Person who is not a Loan Party (each such person, a “Target Person”) under any provision of this Section 6.04, such Investment may be made by advance, contribution or distribution directly or indirectly to a Holdings Parent and further advanced or contributed substantially simultaneously by such Holdings Parent to a Loan Party or other Restricted Subsidiary for purposes of ultimately making the relevant Investment in the Target Person without constituting an Investment for purposes of Section 6.04 (it being understood that such Investment must satisfy the requirements of, and shall count toward any thresholds or baskets in, the applicable clause under Section 6.04 as if made by the applicable Restricted Subsidiary directly to the Target Person).

For purposes of determining compliance with this Section 6.04, in the event that an Investment (or any portion thereof) meets the criteria of more than one of the categories of Investments described in clauses (a) through (ii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) and will only be required to include the amount and type of such Investment in one or more of the above clauses; provided that no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Investment that was not permitted to be made at the initial making thereof.

#### SECTION 6.05 Asset Sales.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, (i) sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors' qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or any Restricted Subsidiary in compliance with Section 6.04(c)) (each, a "Disposition" and the term "Dispose" as a verb has the corresponding meaning), except:

(a) Dispositions of obsolete, damaged, used, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful, or economically practicable or commercially desirable to maintain, in the conduct of the business of Holdings and any Restricted Subsidiary (including by ceasing to enforce or allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any Intellectual Property that is, in the reasonable judgment of Holdings, the Borrower or the Restricted Subsidiaries, no longer used or useful, or economically practicable or commercially desirable to maintain, or in respect of which Holdings, the Borrower or any Restricted Subsidiary determines in its reasonable business judgment that such action or inaction is desirable);

(b) Dispositions (including discounts) of inventory and other assets (including Settlement Assets and notes receivable) in the ordinary course of business and immaterial assets (considered in the aggregate) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property (or a functional equivalent of such property) or (ii) an amount equal to Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property (or a functional equivalent of such property);

(d) Dispositions of property to Holdings, the Borrower or any Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with

Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(e) To the extent constituting Dispositions, transactions permitted by (i) Section 6.03, (ii) Section 6.04 (other than Section 6.04(u)), (iii) Section 6.07 and (iv) Section 6.02;

(f) Dispositions of property acquired by Holdings, the Borrower or any of the Restricted Subsidiaries after the Effective Date pursuant to sale-leaseback transactions;

(g) Dispositions of Permitted Investments;

(h) Dispositions or forgiveness of accounts receivable in connection with the collection or compromise thereof (including sales to factors or other third parties);

(i) leases, subleases, service agreements, product sales, transfers, licenses or sublicenses (including transfers and licenses and sublicenses of Intellectual Property), in each case that do not materially interfere with the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;

(j) transfers of property subject to Casualty Events;

(k) Dispositions of property to Persons other than Restricted Subsidiaries (including the sale or issuance of Equity Interests of a Restricted Subsidiary) for fair market value (as determined by a Responsible Officer of the Borrower in good faith) not otherwise permitted under this Section 6.05 (other than a Disposition of all or substantially all assets of Holdings and the Restricted Subsidiaries); provided that (i) with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of \$10,000,000, Holdings, the Borrower or such Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Permitted Investments; provided, however, that solely for the purposes of this clause (k), (A) any liabilities (as shown on the most recent balance sheet of Holdings, the Borrower or such Restricted Subsidiary or in the footnotes thereto) of Holdings, the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Loan Document Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which Holdings, the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, shall be deemed to be cash, (B) any securities, notes or other obligations or assets received by Holdings, the Borrower or such Restricted Subsidiary from such transferee that are converted by Holdings, the Borrower or such Restricted Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received) within one hundred and eighty (180) days following the closing of the applicable Disposition, shall be deemed to be cash, (C) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Disposition (other than intercompany debt owed to Holdings or its Restricted Subsidiaries), to the extent that Holdings, the Borrower and all of the Restricted Subsidiaries (to the extent previously liable thereunder) are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Disposition, shall be deemed to be cash, (D) any Designated Non-Cash Consideration received by Holdings, the



Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate fair market value (as determined by a Responsible Officer of the Borrower in good faith), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (k) that is at that time outstanding, not in excess of \$15,000,000 at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value (as determined by a Responsible Officer of the Borrower in good faith) of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash and (E) consideration received in connection with an asset swap shall be deemed “cash”, and (ii) at the time of the execution of a binding agreement in respect of and immediately after giving effect to such Disposition, no Default or Event of Default shall have occurred and be continuing;

(l) Dispositions of Investments in joint ventures or non-wholly owned Subsidiaries 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;

(m) Dispositions of any assets not constituting Collateral hereunder, provided that the aggregate fair market value (as determined in good faith by the Borrower) of all such Dispositions, in the aggregate, shall not be in excess of the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA at the time of such Disposition;

(n) Dispositions of any assets (including Equity Interests) (A) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of Holdings, the Borrower and the Restricted Subsidiaries; provided that the fair market value of such assets shall not exceed 25% of the consideration paid in such Permitted Acquisition or Investment or (B) made to obtain the approval of any applicable antitrust authority in connection with the Transactions;

(o) (i) any Disposition of accounts receivable, Securitization Assets, any participations thereof, or related assets in connection with or any Qualified Securitization Facility or (iii) the conversion of accounts receivable to notes receivable;

(p) transfers of condemned real property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of real property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(q) Dispositions constituting any part of a Permitted Reorganization;

(r) Dispositions of Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are Permitted Investments received from Holdings or a Restricted Subsidiary) or assets acquired from Unrestricted Subsidiaries;

(s) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value of usefulness to the business of

Holdings and its Restricted Subsidiaries, taken as a whole, as determined in good faith by the Borrower; provided that the aggregate fair market value (as determined in good faith by the Borrower) of all assets constituting Collateral that are exchanged for other assets not constituting Collateral pursuant to this clause (s) shall not exceed the greater of (x) \$10,000,000 and (y) 10% of Consolidated EBITDA at the time of such swap of assets;

(t) other Dispositions in an aggregate amount not in excess of the greater of (x) \$10,000,000 and (y) 11.5% of Consolidated EBITDA at the time of such Disposition;

(u) samples, including time-limited evaluation software, provided to customers or prospective customers;

(v) de minimis amounts of equipment or other assets provided to employees;

(w) the unwinding of any Cash Management Obligations or Swap Agreement pursuant to its terms;

(x) sales, transfers, leases or other dispositions to or by Holdings or a Restricted Subsidiary pursuant to Intercompany License Agreements; and

(y) Holdings and any Restricted Subsidiary may (i) terminate or otherwise collapse its cost sharing agreements with Holdings or any Restricted Subsidiary and settle any crossing payments in connection therewith, (ii) convert any intercompany Indebtedness to Equity Interests, (iii) transfer any intercompany Indebtedness to Holdings or any Restricted Subsidiary, (iv) settle, discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by Holdings or any Restricted Subsidiary, (v) settle, discount, write off, forgive or cancel any Indebtedness owing by any present or former consultants, directors, officers or employees, Holdings or any Restricted Subsidiary or any of their successors or assigns or (vi) surrender or waive contractual rights and settle or waive contractual or litigation claims.

SECTION 6.06 [Reserved].

SECTION 6.07 Restricted Payments; Certain Payments of Indebtedness.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, declare or make any Restricted Payment, except:

(i) the Borrower and each Restricted Subsidiary may make Restricted Payments to Holdings, the Borrower or any Restricted Subsidiary, provided that in the case of any such Restricted Payment by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, such Restricted Payment is made to Holdings, the Borrower, any Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary pro rata based on their relative ownership interests of the relevant class of Equity Interests;

(ii) Holdings, the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;

(iii) Restricted Payments made to consummate the Transactions and Restricted Payments constituting any part of a Permitted Reorganization;

(iv) repurchases of Equity Interests in any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price or withholding taxes payable in connection with the exercise of such options or warrants or other incentive interests;

(v) Restricted Payments to any Holdings Parent, which such Holdings Parent may use to redeem, acquire, retire, repurchase or settle its Equity Interests (or any options, warrants, restricted stock or stock appreciation rights or similar securities issued with respect to any such Equity Interests) or Indebtedness or to service Indebtedness incurred by a Holdings Parent to finance the redemption, acquisition, retirement, repurchase or settlement of such Equity Interest or Indebtedness, held directly or indirectly by current or former officers, managers, consultants, members of the Board of Directors, employees or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement in an aggregate amount after the Effective Date together with the aggregate amount of loans and advances to any Holdings Parent made pursuant to Section 6.04(l) in lieu of Restricted Payments permitted by this clause (v) not to exceed \$10,000,000 in any fiscal year (\$20,000,000 after consummation of an IPO) with unused amounts in any fiscal year being carried over to the next succeeding calendar year (subject to a maximum of \$20,000,000 (\$50,000,000 after consummation of an IPO) in any calendar year) (without giving effect to the following proviso); provided that such amount in any fiscal year may be increased by (1) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower, Holdings (or by any Holdings Parent and contributed to Holdings) or the Restricted Subsidiaries after the Effective Date, or (2) the amount of any bona fide cash bonuses otherwise payable to members of the Board of Directors, consultants, officers, employees, managers or independent contractors of any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year; provided, further, that cancellation of Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary from members of the Board of Directors, consultants, officers, employees, managers or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of a Holdings Parent, Holdings or the Borrower will not be deemed to constitute a Restricted Payment for purposes of this Section 6.07 or any other provisions of this Agreement;

(vi) [reserved];

(vii) Holdings, the Borrower or a Restricted Subsidiary may make Restricted Payments in cash or Permitted Investments to any Holdings Parent, Holdings, the Borrower or another Restricted Subsidiary, as applicable:

(A) as direct or indirect distributions by Holdings, the Borrower or any Restricted Subsidiary to the direct or indirect holders of the equity interests of Holdings, the Borrower or such Restricted Subsidiary for the purposes of (1) permitting such holders to pay such holders' respective United States federal, state or local Tax obligations with respect to the taxable income, revenue, receipts, gross receipts, gross profits, capital or margin of Holdings, the Borrower and/or its Subsidiaries that is attributed to such direct or indirect holder as a result of its ownership of such equity interests with respect to such taxable period at the maximum marginal federal, state, and local income tax rate in any jurisdiction in the United States for a taxable corporation or individual (whichever is applicable) (taking into account the deductibility of state and/or local income taxes for U.S. federal income tax purposes (and any limitations thereon), any adjustments arising by reason of an election made pursuant to Code Section 754, any cumulative net taxable loss of Holdings, the Borrower and/or its Subsidiaries for prior taxable periods to the extent such loss is of a character that would allow such loss to be available to such equity holder to reduce any taxes of such equity holder in the current taxable period, the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and the need to make such distributions on a pro rata basis) (collectively, "Tax Distributions") and (2) making "catch-up" payments on any applicable high yield discount obligations;

(B) the proceeds of which shall be used by a Holdings Parent to pay (or to make Restricted Payments to allow any direct or indirect parent of such Holdings Parent to pay) (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (2) any reasonable and customary indemnification claims made by members of the Board of Directors or officers, employees, directors, managers, consultants or independent contractors of any Holdings Parent attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due and payable by Holdings, the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by Holdings, the Borrower and any Restricted Subsidiaries under this Agreement, (4) to the extent constituting a Restricted Payment, management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses (including indemnity obligations) payable to the Sponsor or any equity holder of Holdings or a Holdings Parent not to exceed \$2,500,000 in any fiscal year and (5) to satisfy indemnity obligations under agreements in respect of Permitted Acquisitions and (6) amounts that would otherwise be permitted to be paid pursuant to Section 6.08(iii) as it relates to this Transaction, (viii) or (xiv);

(C) the proceeds of which shall be used by a Holdings Parent, Holdings, the Borrower or a Subsidiary to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(D) to finance any Investment made by a Holdings Parent that, if made by Holdings or the Borrower, would be permitted to be made pursuant to Section 6.04; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such Holdings Parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests but not including any loans or advances made pursuant to Section 6.04(b)) to be contributed to Holdings or its Restricted Subsidiaries or (2) the Person formed or acquired to merge into or amalgamate or consolidate with Holdings, the Borrower or any of the Restricted Subsidiaries to the extent such merger, amalgamation or consolidation is permitted in Section 6.03) in order to consummate such Investment, in each case in accordance with the requirements of Sections 5.11 and 5.12;

(E) the proceeds of which shall be used to pay (or to make Restricted Payments to allow a Holdings Parent to pay) fees and expenses related to any actual or proposed equity or debt offering not prohibited by this Agreement and advisory, refinancing, transaction and exit fees and expenses attributable to the business of Holdings and the Restricted Subsidiaries;

(F) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any Holdings Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of Holdings, the Borrower and the Restricted Subsidiaries; and

(G) the proceeds of which shall be used to make payments permitted by clause (b)(iv) (with such Restricted Payment being treated for purposes of such clause (b)(iv), including any limitations, as a payment made pursuant to such clause (b)(iv)) and (b)(v) of Section 6.07;

(viii) in addition to the foregoing Restricted Payments, Holdings may make additional Restricted Payments, in an aggregate amount not to exceed the sum of (A) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment, plus (B) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment; provided that any amounts included in clause (b) of the definition of "Available Amount" may only be used for Restricted Payments so long as (i) no Default shall have occurred and be continuing at the time of declaration of such Restricted Payment and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00 for the most recently ended Test Period as of such time;

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; provided that such new Equity Interests constitute Qualified Equity Interests and contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) [reserved];

(xi) payments to any Holdings Parent to permit it to (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) payments made or expected to be made by any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in respect of withholding or similar Taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, manager or consultant (or their respective controlled Affiliates or permitted transferees) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or required withholding or similar Taxes;

(xiii) the distribution, by dividend or otherwise, of shares of Equity Interests of, or Indebtedness owed to any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are Permitted Investments) received as Permitted Investments from Holdings or a Restricted Subsidiary;

(xiv) so long as no Event of Default exists or would result therefrom, the declaration and payment of a Restricted Payment on Holdings' common stock (or the payment to the IPO Issuer or any Holdings Parent to fund a payment of dividends on such company's common stock), following consummation of an IPO, of up to 6.0% per annum of the net cash proceeds of such IPO received by or contributed to Holdings;

(xv) any distributions or payments of Securitization Fees, sales or contributions and other transfers of Securitization Assets and purchases of Securitization Assets, in each case in connection with a Qualified Securitization Facility;

(xvi) Restricted Payments in an amount not to exceed \$20,000,000 during the term of this Agreement so long as no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom;

(xvii) to the extent constituting Restricted Payments, Holdings, the Borrower and the Restricted Subsidiaries may consummate (1) transactions permitted pursuant to Section 6.03 and (2) make Investments permitted under Section 6.04 (other than Section 6.04(u));

(xviii) [reserved]; and

(xix) Restricted Payments so long as (i) no Event of Default shall have occurred and be continuing at the time of declaration of such Restricted Payment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Junior Financing constituting Material Indebtedness (other than to the extent of any Retained Declined Proceeds applied in compliance with Section 2.11(e)), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Junior Financing, except:

(i) payment of regularly scheduled interest and principal payments, mandatory offers to repay, repurchase or redeem, mandatory prepayments of principal premium and interest, and payment of fees, expenses and indemnification obligations, with respect to such Junior Financing, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings, supplements, substitutions, extensions, restructurings, exchanges or renewals of Indebtedness to the extent permitted by Section 6.01 and fees and expenses in connection therewith;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any Holdings Parent, and any payment that is intended to prevent any Junior Financing from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code;

(iv) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity in an aggregate amount, not to exceed the sum of (A) an amount at the time of making any such prepayment, redemption, repurchase, defeasance or other payment and together with any other prepayments, redemptions, repurchases, defeasances and other payments made utilizing this subclause (A) not to exceed \$20,000,000, plus (B) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment plus (y) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment; provided that any amounts included in clause (b) of the definition of “Available Amount” may only be used for such prepayments, redemptions, repurchases, defeasances and other payments of Junior Financing so long as (i) no Default shall have occurred and be continuing at the time of making such prepayments, redemptions, repurchases, defeasances and other payments and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00;

(v) [reserved];

(vi) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity so long as (i) no Default shall have occurred and be continuing at the time of such prepayment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time;

(vii) prepayment of Second Lien Term Loans and Junior Financing owed to Holdings, the Borrower or any Restricted Subsidiary or the prepayment of Permitted Refinancing of such Indebtedness with the proceeds of any other Junior Financing permitted to be incurred hereunder; and

(viii) so long as no Specified Event of Default then exists or would result therefrom, prepayments of principal of and any required premium on loans under the Second Lien Credit Agreement in connection with the removal of a lender pursuant to Section 2.19(b), 2.21(b), 2.24(c) or 9.02(c) of the Second Lien Credit Agreement (or any comparable provision of a Permitted Refinancing thereof).

(c) Any basket available for Restricted Payments pursuant to Section 6.07(a) may instead be used to make a payment or other distribution of or in respect of principal of or interest on the Second Lien Term Loans or any Junior Financing, or any payment or other distribution on account of the purchase, redemption, retirement, acquisition, cancellation or termination of the Second Lien Term Loans or any Junior Financing, pursuant to Section 6.07(b), and such payment or other distribution shall not be prohibited by Section 6.07(b). For the avoidance of doubt, any such payment or other distribution shall reduce the amount available under such basket set forth in Section 6.07(a).

#### SECTION 6.08 Transactions with Affiliates.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) (A) transactions between or among Holdings, the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction and (B) transactions involving aggregate payment or consideration of less than \$7,500,000, (ii) on terms, taken as a whole, substantially as favorable to Holdings, the Borrower or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (iii) the Transactions and the payment of fees and expenses as part of or in connection with the Transactions, including without limitation the Transaction Costs and transactions constituting any Permitted Reorganization, (iv) the payment of (a) transaction fees and expenses and management fees to the extent otherwise permitted hereunder and (b) indemnities to the Investors (or management companies of the Investors) to the extent such indemnities relate to the ownership and operation of Holdings and its Restricted Subsidiaries, (v) issuances of Equity Interests of Holdings to the extent otherwise permitted by this Agreement, (vi) compensation (including bonuses and securities issuances or other payments, awards, grants in cash or otherwise) and employee benefit arrangements and severance arrangements between



Holdings and its Restricted Subsidiaries and their respective officers, directors, managers, consultants and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Section 6.04) or any acquisition or other Investment permitted hereunder), (vii) payments by Holdings and its Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, to the extent such payments are permitted by Section 6.07, (viii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the Board of Directors, officers and employees of Holdings (or any Holdings Parent), the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, (ix) transactions pursuant to permitted agreements in existence or contemplated on the Effective Date and set forth on Schedule 6.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, (x) Restricted Payments permitted under Section 6.07 and loans and advances in lieu thereof pursuant to Section 6.04(l), (xi) payments to or from, and transactions with, any joint venture in the ordinary course of business (including, without limitation, any cash management activities related thereto), (xii) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and which are fair to Holdings, the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (xiii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets or other customary transactions in connection with or any Qualified Securitization Facility, (xiv) customary payments by Holdings and its Restricted Subsidiaries to the Sponsor or Vista made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or financings), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (xv) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary, and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary and not in contemplation of such Unrestricted Subsidiary becoming redesignated as a Restricted Subsidiary, (xvi) Affiliate repurchases of the Loans Commitments and Second Lien Term Loans under the Second Lien Credit Agreement to the extent permitted hereunder and the holding of such Loans, Second Lien Term Loans or Commitments and the payments and other transactions contemplated herein and in the Second Lien Credit Agreement in respect thereof, and (xvii) any transaction between or among Holdings or any Restricted Subsidiary and any non-wholly owned Affiliate of Holdings or a joint venture or similar entity that is otherwise permitted hereunder to the extent such Affiliate, joint venture or similar entity is an Affiliate solely because Holdings or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, joint venture or similar entity.

SECTION 6.09 Restrictive Agreements.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; provided that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (1) Requirements of Law, (2) any Loan Document, (3) any documentation governing Incremental Equivalent Debt, (4) any documentation governing Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, (5) [reserved], (6) any documentation governing Indebtedness incurred pursuant to Section 6.01(a) (v) (but only to the extent applicable to the assets financed by such Indebtedness (and replacements, additions, accessions and improvements to or proceeds of such assets and other assets financed by the same lender)), (vi), (viii), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xx), (xxv), (xxvi), (xxix), (xxx), or (xxxiv), and (7) any documentation governing any Permitted Refinancing incurred to refinance any such Indebtedness referenced in clauses (1) through (6) above;

(b) customary restrictions and conditions existing on the Effective Date and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses, sublicenses and other contracts (including licenses and sublicenses of Intellectual Property) restricting the assignment, license, sublicense, transfer or security interest thereof or assets subject thereto;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to Holdings, the Borrower or any Restricted Subsidiary (other than such Person that has become a Restricted Subsidiary);

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) restrictions set forth on Schedule 6.09 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(j) customary provisions in shareholders agreements, joint venture agreements, organization constitutive documents or similar binding agreements relating to any joint venture or non-wholly-owned Restricted Subsidiary and other similar agreements applicable to joint ventures and non-wholly-owned Restricted Subsidiaries and applicable solely to such joint venture or non-wholly-owned Restricted Subsidiary and the Equity Interests issued thereby, in each case, permitted by Section 6.04;

(k) customary restrictions contained in leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto;

(l) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Holdings, the Borrower or any Restricted Subsidiary;

(m) customary net worth provisions contained in real property leases or other contracts entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of Holdings, the Borrower and its Subsidiaries to meet their ongoing obligations;

(n) [reserved];

(o) restrictions on transfers of assets subject to Liens permitted by Section 6.02 (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(p) restrictions created in connection with any Qualified Securitization Facility;

(q) any restrictions regarding licensing or sublicensing by Holdings and its Restricted Subsidiaries of Intellectual Property in the ordinary course of business that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole;

(r) any restrictions that arise in connection with cash or other deposits permitted under Section 6.02 and Section 6.04;

(s) the Second Lien Loan Documents; and

(t) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Effective Date and permitted under Section 6.01 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the

Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrances or restriction applies only during the continuance of a default relating to such agreement or instrument.

SECTION 6.10 Amendment of Junior Financing; Modifications of Organizational Documents.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, amend or modify the documentation governing any Junior Financing if such amendment is not expressly permitted by any applicable Intercreditor Agreement or subordination agreement if the effect of such amendment or modification is materially adverse to the Lenders, Swing Line Lender or the Issuing Banks; provided that such modification will not be deemed to be materially adverse if such Junior Financing could be otherwise incurred or refinanced under this Agreement (including as Indebtedness that does not constitute a Junior Financing) with such terms as so modified at the time of such modification.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, terminate, amend or modify any of its Organizational Documents (including, but not limited to, changing jurisdiction of organization) in a manner that is materially adverse to the interests of the Lenders.

SECTION 6.11 Financial Performance Covenant.

As of the end of each fiscal quarter of Holdings (commencing with the first full fiscal quarter ending after the Effective Date) and so long as the aggregate amount of Revolving Exposure outstanding as of the end of such fiscal quarter (excluding (a) all cash collateralized Letters of Credit, and additional undrawn Letters of Credit in an aggregate amount not to exceed \$5,000,000, and (b) [reserved]) exceeds 35.0% of the aggregate amount of all Revolving Commitments in effect as of such date, Holdings and the Borrower shall not permit the Senior Secured First Lien Net Leverage Ratio as of the end of any fiscal quarter ending on any date set forth in the table below, to exceed the applicable ratio set forth in the table below opposite such date, unless the Required Revolving Lenders otherwise consent:

<u>Test Period</u>	<u>Ratio</u>
September 30, 2017	7.70 to 1.00
December 31, 2017	7.70 to 1.00
March 31, 2018	7.70 to 1.00
June 30, 2018	7.70 to 1.00
September 30, 2018	7.70 to 1.00

December 31, 2018	7.70 to 1.00
March 31, 2019	7.70 to 1.00
June 30, 2019	7.70 to 1.00
September 30, 2019 and each Test Period ending thereafter	7.20 to 1.00

## ARTICLE VII

### EVENTS OF DEFAULT

#### SECTION 7.01 Events of Default.

If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay (i) any interest on any Loan when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days, or (ii) any fee or any other amount (other than an amount referred to in paragraph (a) or (b) (i) of this Section 7.01) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten (10) days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, the Borrower or any of its Restricted Subsidiaries in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) (i) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a) or 5.04 (with respect to the existence of Holdings or the Borrower only) or in Article VI (other than the Financial Performance Covenant); provided that any Event of Default under Section 5.02(a) shall be deemed cured upon Borrower providing the applicable written notice; or

(ii) Holdings or any of the Restricted Subsidiaries shall fail to observe or perform the Financial Performance Covenant (a “Financial Performance Covenant Event of Default”); provided, that any Financial Performance Covenant Event of Default shall not constitute an Event of Default with respect to the Initial Term Loans, any

Incremental Term Loan or any Credit Agreement Refinancing Indebtedness (unless consisting of Other Revolving Loans) unless and until the Required Revolving Lenders shall have terminated the Revolving Commitments and declared all amounts outstanding thereunder to be due and payable and such declaration has not been rescinded; provided, further, that any Financial Performance Covenant Event of Default is subject to cure as provided in Section 7.02 and such Financial Performance Covenant Event of Default shall not occur until the expiration of the fifteenth (15th) Business Day subsequent to the date on which the financial statements with respect to the applicable fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable;

(e) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrower;

(f) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period and all required notices have been given); provided that this paragraph (f) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of such non-payment is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares; provided that this paragraph (f) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired and all required notices have been given) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this paragraph (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement), (ii) termination events or similar events occurring under any Swap Agreement that constitutes Material Indebtedness (it being understood that paragraph (f) of this Section 7.01 will apply to any failure to make any payment required as a result of any such termination or similar event) or (iii) any Indebtedness if the sole remedy of the holder thereof following such event or condition is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares, provided that this paragraph (g) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01.

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, court protection, examination, reorganization or other relief in respect of Holdings, the Borrower or any Material Subsidiary or its debts, or of a material part of its assets, under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, examiner, sequestrator, conservator, interim receiver, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets, and, in any such case, such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings, the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, court protection, examinership, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect (but excluding any such proceeding or petition (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator, interim receiver, interim examiner, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets (but excluding any such application or consent (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors;

(j) one or more enforceable judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (to the extent not covered by insurance or another creditworthy (as reasonably determined by the Administrative Agent) indemnitor, and as to which such insurer or indemnitor has not denied coverage) shall be rendered against Holdings, the Borrower, any Material Subsidiary or any combination thereof and the same shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) consecutive days;

(k) an ERISA Event occurs that has resulted or would reasonably be expected, individually or together with any other ERISA Event(s) in the aggregate to result in a Material Adverse Effect;

(l) there shall cease to be, or shall be asserted by any Loan Party not to be (other than in an informational notice), a valid and perfected (if and to the extent required to be perfected under the Loan Documents) Lien on any material portion of the Collateral, with the priority required by the applicable Security Documents, except (i) as a result of the release of a Loan Party (including as a result of the designation of a Restricted Subsidiary as an Unrestricted Subsidiary) or the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) as a result of the Collateral Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments

delivered to it under the Security Documents or (B) file Uniform Commercial Code amendment or continuation financing statements or (iii) 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 (iv) as a result of acts or omissions of the Collateral Agent, the Administrative Agent or any Lender;

(m) any material provision of any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any material portion of the Guarantees of the Loan Document Obligations pursuant to the Guarantee Agreement, taken as a whole, shall cease to be in full force and effect (in each case, other than the occurrence of the Termination Date or otherwise in accordance with the terms of the Loan Documents including as a result of transactions permitted hereunder); or

(o) a Change in Control shall occur;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent at the request of the Required Lenders (provided that the following actions may not be taken (A) in the case of an Event of Default under Section 7.01(d)(ii), until the ability to exercise the Cure Right under Section 7.02 has expired (but may be taken as soon as the ability to exercise the Cure Right has expired and it has not been so exercised or to the extent that Holdings has confirmed in writing that it does not intend to provide the Cure Amount) and (B) in the case of an Event of Default under Section 7.01(d)(i), if the express conditions in the last proviso contained in Section 7.01(d)(i) have been satisfied) shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and (iii) demand the Borrower deposit cash collateral with the Administrative Agent as contemplated by Section 2.05(j) in the aggregate LC Exposure of all outstanding Letters of Credit and thereupon the principal of the Loans and the LC Exposure of all Letters of Credit so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

#### SECTION 7.02 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.01, in the event that Holdings and its Restricted Subsidiaries fail to comply with the requirements of the



Financial Performance Covenant as of the last day of any applicable fiscal quarter of Holdings, at any time after the beginning of such fiscal quarter until the expiration of the fifteenth (15th) Business Day subsequent to the date on which the financial statements with respect to such fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to Section 5.01(a) or (b), as applicable (the “Cure Termination Date”), Holdings shall have the right to issue Qualified Equity Interests for cash or otherwise receive cash contributions to the capital of Holdings as cash common equity or other Qualified Equity Interests (collectively, the “Cure Right”), and upon the receipt by Holdings of the Net Proceeds of such issuance (the “Cure Amount”) pursuant to the exercise by Holdings of such Cure Right the Financial Performance Covenant shall be recalculated giving effect to the following pro forma adjustment:

(i) Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four fiscal quarter period that contains such fiscal quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) if, after giving effect to the foregoing pro forma adjustment (without giving effect to (x) any repayment of any Indebtedness with any portion of the Cure Amount or (y) any portion of the Cure Amount on the balance sheet of Holdings and its Restricted Subsidiaries, in each case, with respect to such fiscal quarter only), Holdings and its Restricted Subsidiaries shall then be in compliance with the requirements of the Financial Performance Covenant, Holdings and its Restricted Subsidiaries shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default or event of default of the Financial Performance Covenant that had occurred shall be deemed cured for the purposes of this Agreement and the other Loan Documents;

provided that the Borrower shall have notified the Administrative Agent of the exercise of such Cure Right within five (5) Business Days of the issuance of the relevant Qualified Equity Interests for cash or the receipt of the cash contributions by Holdings.

(b) Notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period of the Borrower there shall be at least two (2) fiscal quarters in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five (5) times, (iii) for purposes of this Section 7.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant and any amounts in excess thereof shall not be deemed to be a Cure Amount and (iv) neither the Administrative Agent nor any Lender or Secured Party shall exercise any remedy (including acceleration) under the Loan Documents or applicable law on the basis of an Event of Default caused by the failure to comply with Section 6.11 until either (x) after Holding’s ability to cure has lapsed and Holdings has not exercised the Cure Right or (y) Holdings has confirmed in writing that it does not intend to provide the Cure Amount, and, if the Borrower shall have delivered to the Administrative Agent a notice of its intent to cure a breach or default under Section 7.01(d)(ii) prior to the Cure Termination Date, no Event of Default under Section 7.01(d)(ii) shall then be deemed to be in existence, provided, however, that if the Cure Amount is not received by Holdings on or prior to the Cure Termination Date, such Event of Default shall be

deemed to arise). Notwithstanding any other provision in this Agreement to the contrary, the Cure Amount received pursuant to any exercise of the Cure Right shall not be included in the calculation of Consolidated EBITDA or any incurrence ratio test for purposes of determining any available basket under Article VI of this Agreement or for any other purpose under this Agreement. For the avoidance of doubt, no Cure Amounts shall be applied to reduce the Indebtedness of Holdings and its Restricted Subsidiaries on a Pro Forma Basis for purposes of determining compliance with the Financial Performance Covenant for the fiscal quarter in which such Cure Right was made and there shall not have been a breach of any covenant under Article VI of this Agreement by reason of having no longer included such Cure Amount in any basket during the relevant period.

(c) Notwithstanding the foregoing, if an Event of Default would have occurred and be continuing had Holdings not had the option to exercise the Cure Right and not exercised such Cure Right pursuant to the foregoing provisions, the Borrower shall not be permitted, until such Event of Default is cured in accordance with the terms of Section 7.02(a) or waived in accordance with Section 9.02, to make any Borrowings or request any other extensions of credit under the Revolving Commitments (including any issuance of any Letter of Credit but excluding the continuation of any outstanding Revolving Loans and amendments of any outstanding Letters of Credit (not constituting an increase or extension)).

SECTION 7.03 Application of Proceeds. Subject to the terms of the Closing Date Intercreditor Agreement and any other applicable Intercreditor Agreement, the Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Collateral Agent in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all fees, indemnities and other amounts payable to the Collateral Agent in connection with the Loan Documents or any of the Secured Obligations and all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Secured Obligations that constitute Senior Secured First Lien Indebtedness (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of such Secured Obligations owed to them on the date of any such distribution); provided that such payment shall be applied (w).first, to the portion of such Secured Obligations constituting accrued and unpaid fees, (x).second, to the portion of such Secured Obligations constituting such accrued and unpaid interest in respect of the Loans, (y).third, to the portion of such Secured Obligations constituting unpaid principal of the Loans and (z).fourth, to all other Secured Obligations;

THIRD, to any agent of any other junior secured debt, in accordance with the Closing Date Intercreditor Agreement and any other any applicable Intercreditor Agreement; and

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. The Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations. Notwithstanding the foregoing, Excluded Swap Obligations with respect to any Subsidiary Loan Party shall not be paid with amounts received from such Subsidiary Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above.

## ARTICLE VIII

### ADMINISTRATIVE AGENT

#### SECTION 8.01 Appointment and Authority.

(a) Each of the Lenders, the Swing Line Lender and each of the Issuing Banks hereby irrevocably appoints Barclays Bank PLC to act on its behalf as the Administrative Agent and Collateral 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 and Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 8.06) are solely for the benefit of the Administrative Agent and the Collateral Agent, the Lenders, the Swing Line Lender and the Issuing Banks, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. The Administrative Agent may perform any of its respective duties hereunder by or through its officers, directors, agents, employees or affiliates.

(b) The Administrative Agent shall also act as the “Collateral Agent” or, as the case may be, “Security Trustee” under the Loan Documents, and each of the Lenders and each of the Issuing Banks hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent or, as the case may be, the security trustee, of such Lender and such Issuing Bank, and acknowledges that, to the extent required in any relevant jurisdiction, the Administrative Agent may enter into such security trust or equivalent deeds as the Administrative Agent may consider necessary, in each case 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 Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent and Collateral Agent pursuant to Section 8.05 for purposes of holding or

enforcing any Lien on the Collateral (or any portion thereof) granted under the Security 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 VIII and Article IX (including Section 9.03 as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” or the “security agent” or the “security trustee” under the Loan Documents) as if set forth in full herein with respect thereto.

#### SECTION 8.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, 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 of the Borrower as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

#### SECTION 8.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law;

(c) 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 their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not 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 Section 9.02 and in the last paragraph of Section 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of

competent jurisdiction by final and non-appealable judgment; provided that the Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or any Issuing Bank;

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security 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; and

(f) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the Disqualified Lenders List or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Lenders. 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 Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to any anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Loan Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under any anti-terrorism law.

#### SECTION 8.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall

have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance 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. The Administrative Agent may rely on the Register and deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent.

#### SECTION 8.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents (which may include such of the Administrative Agent's affiliates or branches as it deems appropriate) appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub agents, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub agents.

#### SECTION 8.06 Resignation of Administrative Agent.

The Administrative Agent may resign upon fifteen (15) Business Days' notice to the Lenders (unless such notice is waived by the Required Lenders), the Issuing Banks (unless such notice is waived by the Issuing Banks) and the Borrower (unless an Event of Default exists under 7.01(h) or 7.01(i) or unless such notice is waived by the Borrower). Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (such consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank or trust company with an office in the United States, or an Affiliate of any such bank or trust company with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within fifteen (15) Business Days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to), with the Borrower's consent (such consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing), on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank (the date upon which the retiring Administrative Agent is replaced, the "Resignation Effective Date"); provided that if the Administrative Agent shall notify the Borrower and the Lenders that it does not intend to appoint a successor or that no qualifying Person accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section.

If the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders and Holdings may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within fifteen (15) Business Days (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) 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 or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. 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 or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Any resignation by Barclays Bank PLC as Administrative Agent pursuant to this Section 8.06 shall also constitute its resignation as an Issuing Bank and the Swing Line Lender, in which case such resigning Issuing Bank and Swing Line Lender (x) shall not be required to issue any further Letters of Credit or extend any further Swing Line Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swing Line Lender with respect to any Letters of Credit issued by it or Swing Line Loans extended by it, as applicable, prior to the date of such resignation so long as such Letters of Credit, LC Exposure or Swing Line Loans remain outstanding and not otherwise cash collateralized in accordance with the terms herein. Upon the acceptance of a

successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swing Line Lender, (ii) the retiring Issuing Bank and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

#### SECTION 8.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption, Incremental Facility Amendment or Refinancing Amendment pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent and Collateral Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent or Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent or Collateral Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent or Collateral Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.



SECTION 8.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, neither any Joint Lead Arrangers nor any person named on the cover page hereof as a Joint Lead Arranger shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or outstanding Letter of Credit 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, Letter of Credit outstandings and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks, the Swing Line Lender and the Administrative Agent under Sections 2.12 and 9.03) 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 each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or any Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank or in any such proceeding.

SECTION 8.10 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, any Issuing Bank 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 Article VII for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Banks or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank or the Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.08 (subject to the terms of Section 2.18), 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 Article VII and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.18, 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 8.11 Status of Administrative Agent.

On or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement, the Administrative Agent shall deliver to the Borrower (i) if the Administrative Agent is a United States person (as defined in Section 7701(a)(30) of the Code), an executed copy of Internal Revenue Service Form W-9, or (ii) if the Administrative Agent is not a United States person (as defined in Section 7701(a)(30) of the Code), (A) an executed applicable Internal Revenue Service Form W-8ECI with respect to amounts received on its own account and (B) an executed Internal Revenue Service Form W-8IMY evidencing its agreement with the Borrower to be treated as a United States person (as defined in Section 7701(a)(30) of the Code) as set forth in U.S. Treasury Regulation Section 1.1441-1T(b)(2)(iv), for the purpose of permitting the Borrower to make payments to such Administrative Agent without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent shall deliver such documentation on or before any date on which such documentation expires or becomes obsolete or invalid, after the occurrence of any change in the Administrative Agent's circumstances requiring a change in the most recent documentation previously delivered by it to the Borrower, and from time to time thereafter if reasonably requested by the Borrower, and shall promptly notify the Borrower in writing if it is no longer legally eligible to provide any documentation previously provided.

MISCELLANEOUS

SECTION 9.01 Notices.

(a) All notices and other communications provided for herein shall be in writing and shall be delivered by overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission (including e-mail), as follows:

(i) if to Holdings, the Borrower, the Administrative Agent, the Swing Line Lender or Barclays Bank PLC as an Issuing Bank, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 9.01; and

(ii) if to any other Lender or Issuing Bank, to it at its address (or fax number, telephone number or e-mail address) set forth in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain Material Non-Public Information relating to the Borrower).

Notices and other communications sent by 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 fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures reasonably approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received when sent to the proper e-mail address as specified on Schedule 9.01 (as updated from time to time in accordance with Section 9.01(d)), 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 Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received when an e-mail is sent to 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.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to Holdings, the Borrower, any Lender, any Issuing Bank 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 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, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Holdings, the Borrower, the Administrative Agent, the Swing Line Lender and any Issuing Bank may change its address, electronic mail address, fax or telephone number for notices and other communications or website hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the Swing Line Lender and the Issuing Banks. 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, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, Issuing Bank and Lenders. The Administrative Agent, the Swing Line Lender, the Issuing Banks and the Lenders shall be entitled to rely and act upon any 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. 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 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power under this Agreement or any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or

further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks, the Swing Line Lender and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance, amendment, renewal or extension of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.20 with respect to any Incremental Facility Amendment, Section 2.21 with respect to any Refinancing Amendment or Section 2.24 with respect to any Permitted Amendment, neither this Agreement, any Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent and the Required Lenders (provided, that if such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall only be required to acknowledge such waiver, amendment or modification) or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that, to the extent not otherwise specified, the consent of the Required Lenders shall not be required with respect to the amendments set forth below; provided, further, that no such agreement shall (i) increase the Commitment of any Lender without the written consent of (x) the Required Lenders and (y) such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the reimbursement obligations of the Borrower for the LC Exposure at such time (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness of principal) or reduce the rate of interest thereon, or reduce any fees or premiums payable hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that any change to the definition of Total Net Leverage Ratio, Senior Secured Net Leverage Ratio or Senior Secured First Lien Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction of interest or fees), provided that only the consent of the Required Lenders shall be necessary to waive or otherwise modify any obligation of the Borrower to pay default interest pursuant to Section 2.13(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or the date of any scheduled amortization payment of the principal amount of any Term Loan under Section 2.10 or the applicable Refinancing Amendment, or the reimbursement date with respect to any LC Disbursement, or any date for the payment of any interest, premium

or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby, (iv) change Section 2.18(b), Section 2.18(c) or Section 7.03 in a manner that would alter the pro rata sharing of payments or other amounts required thereby without the consent of each Lender directly and adversely affected thereby (provided, that any such changes required in connection with any Refinancing Amendment, Incremental Facility Amendment or other transaction expressly permitted hereunder shall only require the approval (to the extent any approval is required) of the Required Lenders so long as the Administrative Agent is notified of such amendment), (v) change any of the provisions of this Section 9.02(b) without the written consent of each Lender, (vi) change the definition of "Required Lenders", "Required Revolving Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vii) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender) or (viii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender (other than a Defaulting Lender), except as expressly provided in the Loan Documents; provided, further, that in connection with an amendment that addresses solely a repricing transaction in which any Class of Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) is refinanced with a replacement Class of term loans or revolving commitments (and the revolving loans in respect hereof) bearing (or is modified in such a manner such that the resulting term loans or revolving commitments (and the revolving loans in respect hereof) bear a lower yield, only the consent of the Lenders holding Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) subject to such permitted repricing transaction that will continue as a Lender in respect of the repriced tranche of Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) or modified Term Loans or Revolving Commitments and the Revolving Loans in respect hereof shall be required); provided, further, that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Swing Line Lender or any Issuing Bank without the prior written consent of the Administrative Agent, the Swing Line Lender or such Issuing Bank, as the case may be; provided, however, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the Swing Line Lender and the Borrower so long as the obligations of the Revolving Lenders are not affected thereby, (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any mistake, ambiguity, omission, defect, obvious error or incorrect cross-reference, or to effect administrative changes of a technical or immaterial nature or to correct any inconsistency and (C) 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 Holdings, the Borrower and the requisite percentage in interest of the affected Class of Lenders stating that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the

Administrative Agent, Holdings 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 and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion and (b) guarantees, Security Documents and related documents in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement and the other Loan Documents, 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, (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents or (iv) to integrate any Incremental Facility or Credit Agreement Refinancing Indebtedness in a manner consistent with this Agreement and the other Loan Documents. Notwithstanding the foregoing, (A) no Lender or Issuing Bank consent is required to effect any amendment, modification or supplement to any Intercreditor Agreement or subordination agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral, including any Incremental Term Loan or Revolving Loan under any Incremental Revolving Commitment Increase, any Other Term Loan, Other Revolving Loan or Other Revolving Commitments, for the purpose of adding the holders of such Indebtedness (or their Senior Representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto, to give effect hereto or otherwise carry out the purposes thereof, in each case as contemplated by the terms of such Intercreditor Agreement permitted under this Agreement (including any changes thereto as contemplated by Section 9.14(b)) or subordination agreement or arrangement permitted under this Agreement, as applicable and (B) no agreement shall (x) amend, waive or otherwise modify Section 6.11 hereof or the defined terms used for Section 6.11, (y) waive any Financial Performance Covenant Event of Default without the written consent of the Required Revolving Lenders or (z) amend, waive or otherwise modify any of the conditions set forth in Section 4.02 with respect to the making of any Revolving Loan or issuance of any Letters of Credit without the written consent of the Required Revolving Lenders; provided, however, that any amendments, modifications, waivers and consents described in this clause (B) shall not require the consent of any Lenders other than the Required Revolving Lenders.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a “Non-Consenting Lender”), then the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, (i) require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) or (ii) prepay the Loans and, if applicable, terminate the Revolving Commitments of such Non-Consenting Lenders; provided that (a) in the case of the preceding clause (i), the Borrower shall have received the prior

written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable (and, if a Revolving Commitment is being assigned and each Issuing Bank), which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding par principal amount of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (including pursuant to Section 2.11(a)(i)) from (x) in the case of preceding clause (i), the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (y) in the case of preceding clause (ii), from the Borrower, and (c) in the case of preceding clause (i), unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b). If any applicable Lender shall be deemed a Non-Consenting Lender and is required to assign all or any portion of its Initial Term Loans or its Initial Term Loans are prepaid by the Borrower pursuant to this Section 9.02(c) on or prior to the six-month anniversary of the Effective Date as a result of a Repricing Transaction, the Borrower shall pay such Non-Consenting Lender a fee equal to 1.00% of the principal amount of the Initial Term Loans so assigned or prepaid.

(d) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Revolving Commitments, Term Loans and Revolving Exposure of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); provided that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender (other than an Affiliated Debt Fund) hereby agrees that, for purposes of any plan of reorganization, such Affiliated Lender will be deemed to have voted in the same proportion as non-Affiliated Lenders voting on such matter; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion in connection with any plan of reorganization to the extent (a) any such plan of reorganization proposes to treat any Secured Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Secured Obligations held by Lenders that are not Affiliates of the Borrower, (b) that would deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled or (c) if such plan of reorganization does not require the consent of each Lender or each affected Lender.

#### SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay, if the Effective Date occurs and the Transactions have been consummated, (i) all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent, the Joint Lead Arrangers, each Issuing Bank and their respective Affiliates (without duplication), (but limited, (A) in the case of legal fees and expenses,



to the reasonable, documented, out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, the Issuing Banks and the Joint Lead Arrangers, taken as a whole, plus, if reasonably necessary, one regulatory counsel and one local counsel to the Administrative Agent, the Issuing Banks and the Joint Lead Arrangers, taken as a whole, in any relevant material jurisdiction, in each case excluding allocated costs of in-house counsel (and in the case of an actual or potential conflict of interest, one additional counsel and local counsel to the affected Lenders, taken as a whole) and (B) in the case of other consultants and advisors, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed), in each case for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, and the preparation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof), (ii) all reasonable and documented and invoiced out-of-pocket costs and expenses incurred by each Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented and invoiced out-of-pocket expenses (but not third party costs or expenses such as legal fees or the fees of other advisors) incurred by the Administrative Agent, each Issuing Bank or any Lender and the fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, in any relevant material jurisdiction (and in the case of an actual or potential conflict of interest, one additional counsel to the affected Lenders, taken as a whole) (but limited, (A) in the case of legal fees and expenses, to the fees, disbursements and other charges of one counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, and, if reasonably necessary, one local counsel and one regulatory counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, in each relevant material jurisdiction (and in the case of an actual or potential conflict of interest, one additional counsel to the affected Lenders, taken as a whole) and (B) in the case of other consultants and advisers, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed) in connection with the enforcement or protection of any rights or remedies in connection with the Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Laws or during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit).

(b) Without duplication of the expense reimbursement obligations pursuant to clause (a) above, the Borrower shall indemnify the Administrative Agent, each Issuing Bank, each Lender, the Joint Lead Arrangers and each Related Party (other than Excluded Affiliates) of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (but limited, in the case of legal expenses, to the reasonable and documented and invoiced out-of-pocket fees and expenses of one counsel for all Indemnities and to the extent reasonably determined by the Administrative Agent to be necessary, one regulatory counsel and one local counsel in each relevant jurisdiction (and, in the case of an actual or potential conflict of interest, one additional counsel) for all Indemnities (which may include a single special counsel acting in multiple jurisdictions but excluding allocated costs of in-house counsel)), incurred by or asserted against any Indemnitee by any third party or by the Borrower, Holdings or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any Loan Document or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the

consummation of the Transactions or any other transactions contemplated thereby, the syndication of the credit facilities provided for herein, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other real property currently owned or operated by Holdings, the Borrower or any Subsidiary, or any other Environmental Liability related in any way to Holdings, the Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, Holdings or any Subsidiary or their Affiliates and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, costs or related expenses (w) resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or its controlled Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (x) resulted from a material breach of the Loan Documents by such Indemnitee or its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) arise from disputes between or among Indemnities (other than disputes involving claims against the Administrative Agent, the Collateral Agent or the Joint Lead Arrangers or any Issuing Bank, in each case, in their respective capacities) that do not involve an act or omission by the Sponsor, Holdings, the Borrower or any Restricted Subsidiary or (z) resulted from any settlement effected without the Borrower's prior written consent (which consent shall not be unreasonably withheld or delayed); provided that, to the extent any amounts paid to an Indemnitee in respect of this Section 9.03, such Indemnitee, by its acceptance of the benefits hereof, agrees to refund and return any and all amounts paid by the Borrower to it if, pursuant to the operation of the foregoing clauses (w) through (z), such Indemnitee was not entitled to receipt of such amount. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, any Lender or any Issuing Bank under paragraph (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Administrative Agent, such Lender or such Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Lender or such Issuing Bank in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at such time. The obligations of the Lenders under this paragraph (c) are subject to the last sentence of Section 2.02(a) (which shall apply *mutatis mutandis* to the Lenders' obligations under this paragraph (c)).

(d) To the extent permitted by applicable law, none of Holdings, the Borrower, any Agent, any Lender, any other party hereto or any Indemnitee shall assert, and each hereby waives, any claim against any other such Person on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement)

arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby or thereby, or any act or omission or event occurring in connection therewith and each such Person further agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

(e) In case any proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Borrower of the commencement of any proceeding; provided, however, that the failure to do so will not relieve the Borrower from any liability that it may have to such Indemnitee hereunder, except to the extent that the Borrower is materially prejudiced by such failure. Notwithstanding the above, following such notification, the Borrower may elect in writing to assume the defense of such proceeding, and, upon such election, the Borrower will not be liable for any legal costs subsequently incurred by such Indemnitee (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) the Borrower has failed to provide counsel reasonably satisfactory to such Indemnitee in a timely manner, (ii) counsel provided by the Borrower reasonably determines its representation of such Indemnitee would present it with a conflict of interest or (iii) the Indemnitee reasonably determines that there are actual conflicts of interest between the Borrower and the Indemnitee, including situations in which there may be legal defenses available to the Indemnitee which are different from or in addition to those available to the Borrower.

(f) Notwithstanding anything to the contrary in this Agreement, the extent permitted by applicable law, neither Holdings nor the Borrower shall assert, and each hereby waives, any claim against any Indemnitee for any direct or actual damages arising from the use by unintended recipients of information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems (including the Internet) in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; except to the extent that such direct or actual damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties.

(g) All amounts due under this Section 9.03 shall be payable not later than twenty (20) Business Days after written demand therefor; provided, however, that any Indemnitee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (other than to a

Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) without the prior written consent of each Lender, each Issuing Bank and the acknowledgement of the Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent (other than to a Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) shall be null and void), (ii) no assignment shall be made to any Defaulting Lender or any of its Affiliates, or any Persons who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii) and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04), the Indemnitees and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraphs (b)(ii) and (f) below, any Lender may assign to one or more Eligible 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) with the prior written consent (such consent not to be unreasonably withheld or delayed) of (A) the Borrower; provided that no consent of the Borrower shall be required for an assignment (x) by a Term Lender to any Lender, an Affiliate of any Lender or an Approved Fund, (y) if a Specified Event of Default has occurred and is continuing or (z) by a Revolving Lender to any Lender, an Affiliate of any Lender or an Approved Fund; provided, further, that no assignee contemplated by the immediately preceding proviso shall be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable assignor would have been entitled to receive with respect to the assignment made to such assignee, unless the assignment to such assignee is made with the Borrower's prior written consent; provided, further, that the Borrower shall have the right to withhold its consent to any assignment if in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority, (B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of a Term Loan subject to Section 9.04(f) and (g), an Affiliated Lender, Holdings, the Borrower or any of its Subsidiaries; provided, further, that no consent of the Administrative Agent shall be required for an assignment of Term Loans to a Lender or by a Lender to one of its controlled Affiliates or an Affiliate under common control with such Lender and (C) solely in the case of Revolving Loans and Revolving Commitments, each Issuing Bank and the Swing Line Lender (not to be unreasonably withheld or delayed); provided that, for the avoidance of doubt, no consent of any Issuing Bank shall be required for an assignment of all or any portion of a Term Loan or Term Commitment. Notwithstanding anything in this Section 9.04 to the contrary, if the Borrower has not given the Administrative Agent written notice of its objection to an assignment of Term Loans within ten (10) Business Days after written notice of such assignment, the Borrower shall be deemed to have consented to such assignment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's

Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall, in the case of Revolving Loans, not be less than \$5,000,000 (and integral multiples thereof) or, in the case of a Term Loan, \$1,000,000 (and integral multiples thereof), unless the Borrower and the Administrative Agent otherwise consent (in each case, such consent not to be unreasonably withheld or delayed); provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) 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 execute and deliver to the Administrative Agent an Assignment and Assumption, and, in each case, together with a processing and recordation fee of \$3,500 payable by the assignee; provided that such processing and recordation fee shall not be payable in connection with an assignment by a Lender to one of its controlled Affiliates or an Affiliate under common control with such Lenders; provided, further, that the Administrative Agent, in its sole discretion, may elect to waive or reduce such processing and recordation fee; provided, further, that any such Assignment and Assumption shall include a representation by the assignee that the assignee is not a Disqualified Lender (but only if the Disqualified Lenders List is available to such assignee and Lenders upon request); provided, further, that assignments made pursuant to Section 2.19(b), 2.21(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective, (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent any tax forms required by Section 2.17(f) and an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain Material Non-Public Information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws and (E) unless the Borrower otherwise consents, no assignment of all or any portion of the Revolving Commitment of a Lender that is also an Issuing Bank may be made unless (1) the assignee shall be or become an Issuing Bank, as applicable, and assume a ratable portion of the rights and obligations of such assignor in its capacity as Issuing Bank, or (2) the assignor agrees, in its discretion, to retain all of its rights with respect to and obligations to make or issue Letters of Credit hereunder in which case the Applicable Fronting Exposure of such assignor may exceed such assignor's Fronting Exposure Cap for purposes of Section 2.05(b) by an amount not to exceed the difference between the assignor's Fronting Exposure Cap prior to such assignment and the assignor's Fronting Exposure Cap following such assignment; provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 paragraph (c)(i) of this Section 9.04 to the extent otherwise permitted thereby or otherwise shall be void.

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and interest amounts of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). 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. The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent, the Issuing Banks 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Register is intended to cause each Loan to be in registered form for U.S. federal income tax purposes under Section 5f.103-1(c) of the U.S. Treasury Regulations and Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(f) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words “execution”, “signed”, “signature” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as an original executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more banks or other Persons (other than to a Disqualified Lender (but only if the Disqualified Lenders List is available to Lenders upon request) or other Person that is not an Eligible Assignee) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent, the Issuing Banks 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 any other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(iii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the obligations and limitations thereof and Section 2.19, it being understood that any tax forms required by Section 2.17(f) shall be provided to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04 provided that such Participant agrees to be subject to the provisions of Sections 2.19 as if it were an assignee under paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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 the parties hereto shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of its Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans or other obligations under the Loan Documents) except to the extent to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(iii) A Participant (other than a Revolving Lender pursuant to Section 2.05(e)) shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 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.

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other "central" bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans and participations in Letters of Credit and Swing Line Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(f) Notwithstanding anything to the contrary herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement to an Affiliated Lender subject to the following limitations:

(i) Affiliated Lenders (other than Affiliated Debt Funds) will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of Borrowings, notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;



(ii) for purposes of any amendment, waiver or modification of any Loan Document (including such modifications pursuant to Section 9.02), or, subject to Section 9.02(e), in any plan of reorganization pursuant to the U.S. Bankruptcy Code, that in either case does not require the consent of each Lender, or that would not deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled, Affiliated Lenders will be deemed to have voted in the same proportion as the Lenders that are not Affiliated Lenders voting on such matter; and each Affiliated Lender hereby acknowledges, agrees and consents that if, for any reason, its vote to accept or reject any plan pursuant to the U.S. Bankruptcy Code is not deemed to have been so voted, then such vote will be (x) deemed not to be in good faith and (y) “designated” pursuant to Section 1126(e) of the U.S. Bankruptcy Code such that the vote is not counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the U.S. Bankruptcy Code; provided that Affiliated Debt Funds will not be subject to such voting limitations and will be entitled to vote as any other Lender; provided that Affiliated Debt Funds may not account for more than 49.9% of the “Required Lenders” in any Required Lender vote;

(iii) Affiliated Lenders may not purchase Revolving Loans, Other Revolving Loans or Swing Line Loans, including pursuant to this Section 9.04;

(iv) the aggregate principal amount of Term Loans purchased by assignment pursuant to this Section 9.04 and held at any one time by Affiliated Lenders (other than Affiliated Debt Funds) may not exceed 25.0% of the aggregate principal amount of all Term Loans outstanding at the time of such purchase, after giving effect to any substantially simultaneous cancellations thereof;

(v) Affiliated Lenders shall clearly identify themselves as an Affiliated Lender in the loan assignment documentation. In no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any lender is an Affiliated Lender or Affiliated Debt Fund nor shall the Administrative Agent be obligated to monitor the number of Affiliated Lenders or Affiliated Debt Funds or the aggregate amount of Term Loans or Incremental Term Loans held by Affiliated Lenders or Affiliated Debt Funds;

(vi) Affiliated Lenders (other than Affiliated Debt Funds) will not be permitted to vote on matters requiring a Required Lender vote, and the Term Loans held by Affiliated Lenders (other than Affiliated Debt Funds) shall be disregarded in determining (x) other Lenders’ commitment percentages or (y) matters submitted to Lenders for consideration that do not require the consent of each Lender or each affected Lender; provided that the commitments of any Affiliated Lender shall not be increased, the Interest Payment Dates and the dates of any scheduled amortization payments (including at maturity) owed to any Affiliated Lender hereunder will not be extended and the amounts owing to any Affiliated Lender hereunder will not be reduced without the consent of such Affiliated Lender;

(vii) each Lender making such assignment to such Affiliated Lender acknowledges and agrees that in connection with such assignment, (1) such Affiliated Lender then may have, and later may come into possession of Material Non-Public

Information, (2) such Lender has independently and, without reliance on such Affiliated Lender, Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender's lack of knowledge of the Material Non-Public Information and (3) none of Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, any Affiliated Lender or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, such Affiliated Lender and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders; and

(viii) proceeds of Revolving Loans may not be used to effect Term Loans purchased by assignment pursuant to this Section 9.04(f).

(g) Any Lender may, at any time, assign all or a portion of its Term Loans (but not Revolving Loans, Other Revolving Loans or Swing Line Loans) to Holdings or any of its Subsidiaries, 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 2.11(a)(iii) or other customary procedures acceptable to the Administrative Agent and/or (y) open market purchases on a non-pro rata basis, provided that (i) the Borrower shall not make any Revolving Borrowing, Other Revolving Loans or Swing Line Loans to fund such assignment, (ii) any Term Loans that are so assigned will be automatically and irrevocably cancelled and the aggregate principal amount of the tranches and installments of the relevant Term Loans then outstanding shall be reduced pro rata by an amount equal to the par principal amount of such Term Loans, (iii) no Event of Default shall have occurred and be continuing and (iv) each Lender making such assignment to Holdings or any of its Subsidiaries acknowledges and agrees that in connection with such assignment, (1) Holdings or its Subsidiaries then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender's lack of knowledge of the Material Non-Public Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders.

(h) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Lender without the prior written consent of the Borrower; provided that, upon the inquiry by (i) any Lender to the Administrative Agent as to whether a specified potential assignee or prospective participant is on the Disqualified Lenders List or (ii) any potential assignee as to whether such potential assignee is on the Disqualified Lenders List the Administrative Agent

shall be provide such list of Disqualified Lenders to such Lender or potential assignee, as applicable; provided, further, that inclusion on the Disqualified Lenders List shall not apply retroactively to disqualify any persons that have previously acquired an assignment or participation in the Loan if such person was not included on the Disqualified Lenders List at the time of such assignment or participation. Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if any Lender was a Disqualified Lender at the time of the assignment of any Loans or Commitments to such Lender, following written notice from the Borrower to such Lender and the Administrative Agent and otherwise in accordance with Section 2.19(b), as applicable: (1) such Lender shall promptly assign all Loans and Commitments held by such Lender to an Eligible Assignee (and the signature of such Disqualified Lender shall not be required on any such assignment); provided that (A) the Administrative Agent shall not have any obligation to the Borrower, such Lender or any other Person to find such a replacement Lender, (B) the Borrower shall not have any obligation to such Disqualified Lender or any other Person to find such a replacement Lender or accept or consent to any such assignment to itself or any other Person subject to the Borrower's consent in accordance with Section 9.04(b)(i) and (C) the assignment of such Loans and/or Commitments, as the case may be, shall be at par plus accrued and unpaid interest and fees; (2) such Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of any Class), all affected Lenders (or all affected Lenders of any Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that (x) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Disqualified Lender adversely and in a manner that is disproportionate to other affected Lenders shall require the consent of such Disqualified Lender; and (3) no Disqualified Lender is entitled to receive information provided solely to Lenders by the Administrative Agent or any Lender or will be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices or Borrowings, notices or prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II. Notwithstanding anything to the contrary herein, the Borrower (on behalf of itself and the other Loan Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Institution.

(i) Notwithstanding the foregoing, any Affiliated Lender shall be permitted, at its option, to contribute any Term Loans so assigned to such Affiliated Lender pursuant to this Section 9.04 to Holdings or any of its Subsidiaries for purposes of cancellation, which contribution may be made (including, with the Borrower's consent, to the Borrower, whether through Holdings or otherwise), in exchange for Qualified Equity Interests of Holdings or the Borrower or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred (including, if applicable, as a Permitted Refinancing) pursuant to Section 6.01 at such time.

#### SECTION 9.05 Survival.

All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and all other amounts payable hereunder, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. Notwithstanding the foregoing or anything else to the contrary set forth in this Agreement, in the event that, in connection with the refinancing or repayment in full of the credit facilities provided for herein, an Issuing Bank shall have provided to the Administrative Agent a written consent to the release of the Revolving Lenders from their obligations hereunder with respect to any Letter of Credit issued by such Issuing Bank (whether as a result of the obligations of the Borrower (and any other account party) in respect of such Letter of Credit having been collateralized in full by a deposit of cash with such Issuing Bank or being supported by a letter of credit that names such Issuing Bank as the beneficiary thereunder, or otherwise), then from and after such time such Letter of Credit shall cease to be a "Letter of Credit" outstanding hereunder for all purposes of this Agreement and the other Loan Documents, and the Revolving Lenders shall be deemed to have no participations in such Letter of Credit, and no obligations with respect thereto, under Section 2.05(e) or (f).

#### SECTION 9.06 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of an original executed counterpart of this Agreement.

#### SECTION 9.07 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining

provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.07, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Swing Line Lender or the Issuing Banks, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### SECTION 9.08 Right of Setoff.

If a Specified 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, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency, but not withholding or payroll accounts, employee benefits accounts, de minimis accounts or other accounts used exclusively for taxes or fiduciary or trust purposes) 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 the Borrower (excluding, for the avoidance of doubt, any Settlement Assets except to effect Settlement Payments such Lender is obligated to make to a third party in respect of such Settlement Assets or as otherwise agreed in writing between the Borrower and such Lender) against any of and all the obligations of the Borrower then due and owing under this Agreement held by such Lender or Issuing Bank, irrespective of whether or not such Lender or Issuing Bank shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender or Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender and applicable Issuing Bank shall notify the Borrower and the Administrative Agent of such setoff and application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender and each Issuing Bank under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or such Issuing Bank may have. Notwithstanding the foregoing, no amount set off from any Loan Party (other than the Borrower) shall be applied to any Excluded Swap Obligation of such Loan Party (other than the Borrower).

#### SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any federal court sitting in the Borough of Manhattan in the City of New York or, if that court does not have subject matter jurisdiction, in

any state court located in the City and County of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court except to the extent required by any Security Document to be brought in another jurisdiction pursuant to the terms of such Security Document. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings or the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.01. NOTHING IN ANY LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

#### SECTION 9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY 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 ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

#### SECTION 9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality.

(a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (other than Excluded Affiliates) and its and their respective directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors and any numbering, administration or settlement service providers on a “need-to-know” basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be instructed to keep such Information confidential and any failure of such Persons acting on behalf of the Administrative Agent, any Issuing Bank or the relevant Lender to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent, such Issuing Bank or the relevant Lender, as applicable), (ii) to the extent requested or required by any governmental authority, regulatory authority or self-regulatory authority, required by applicable law, rule or regulation or by any subpoena or similar legal process or in connection with the exercise of remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder (including without limitation for purposes of establishing any appropriate due diligence defense) or any other pending legal, judicial or administrative proceeding or other compulsory process or upon the good faith determination by counsel that such Information should be disclosed in light of ongoing oversight or review of such Administrative Agent, Issuing Bank or Lender, as applicable, by any governmental or regulatory (including self-regulatory) authority having jurisdiction over the Administrative Agent, Issuing Bank or Lender or its Affiliates, as applicable; provided that (x) solely to the extent permitted by law and other than in connection with routine audits and reviews by regulatory and self-regulatory authorities, each Lender and the Administrative Agent shall promptly notify the Borrower of any such requested or required disclosure in connection with any legal or regulatory proceeding and (y) in the case of clause (ii) only, each Lender and the Administrative Agent shall use commercially reasonable efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, (iii) to any other party to this Agreement, (iv) to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (B) any actual or prospective counterparty (or its advisors) to any Swap Agreement or derivative transaction relating to any Loan Party or its Subsidiaries and its obligations under the Loan Documents or (C) any pledgee referred to in Section 9.04(d), in the case of each of the preceding clauses (A) through (C), other than to a Disqualified Lender; provided that any such disclosure under this clause (iv) shall be made subject to the acknowledgment and acceptance by such assignee or Participant, prospective assignee or Participant, actual or prospective counterparty (or its advisors) or pledgee, as applicable, that such Information is being disseminated on a confidential basis (on substantially the same terms set forth in this Section 9.12 or as is reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the customary market standards for dissemination of such type of Information, in the event of any electronic access through Intralinks, another website or similar electronic system or platform, which shall in any event require “click through” or other affirmative action on the part of the recipient to access such Information and acknowledge its confidentiality obligations in respect thereof, in each case on terms reasonably acceptable to the Borrower, (v) if required by any rating agency; provided that prior to any such disclosure, such rating agency shall have agreed in writing to maintain the confidentiality of such Information, (vi) to service providers providing administrative and ministerial services solely in connection with the syndication and administration of the Loan Documents and the facilities (e.g., identities of parties, maturity dates,

interest rates, etc.) on a confidential basis, or (vii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.12 or (y) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary, which source is not known (after due inquiry) by the recipient of such information to be subject to a confidentiality obligation. For the purposes hereof, "Information" means all information received from or on behalf of Holdings or the Borrower relating to Holdings, the Borrower, any other Subsidiary or their business other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Holdings, the Borrower or any Subsidiary. Notwithstanding the foregoing, provided that the Disqualified Lenders List has been shared with the Lenders, no such information shall be disclosed to a Disqualified Lender that constitutes a Disqualified Lender at the time of such disclosure without the Borrower's prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12(a)) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

#### SECTION 9.13 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.



(a) A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, (1) upon the consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary (including pursuant to a permitted merger or amalgamation with a Subsidiary that is not a Loan Party or a designation as an Unrestricted Subsidiary) or becomes an Excluded Subsidiary or (2) upon the request of the Borrower, in connection with a transaction permitted under this Agreement, as a result of which such Subsidiary Loan Party ceases to be a Wholly Owned Subsidiary; provided that the release of any Subsidiary Loan Party from its obligations under the Loan Documents (i) if such Subsidiary Loan Party becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof and/or (ii) pursuant to preceding clause (2) of this Section 9.14(a), such release shall only be permitted if (y) after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be released, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time and (z) a Responsible Officer of the Borrower certifies to the Administrative Agent compliance with preceding clause (y); provided, further, that no such release shall occur if such Subsidiary Loan Party continues to be a guarantor in respect of the Second Lien Credit Agreement, any Incremental Equivalent Debt, any Other Term Loans, any Incremental Facility, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing in respect of any of the foregoing; provided, further, that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise, or (3) as provided in the Closing Date Intercreditor Agreement. Upon any sale or other transfer by any Loan Party (other than to any other Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral or upon any Collateral becoming an Excluded Asset, the security interests in such Collateral created by the Security Documents shall be automatically released. Upon the release of Holdings or any Subsidiary Loan Party from its Guarantee in compliance with this Agreement, the security interest in any Collateral owned by Holdings or such Subsidiary created by the Security Documents shall be automatically released. Upon the designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Agreement, the security interest created by the Security Documents in the Equity Interests of such new Unrestricted Subsidiary shall automatically be released. To the extent the release of any Lien in any Collateral 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 9.02), the security interest in such Collateral shall be automatically released. To the extent the release of any security interest in any Collateral is required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Loan Documents, the security interest in such Collateral shall be automatically released. In addition, liens shall be released and guarantees released in accordance with the terms of the Security Documents and the Guarantee. Upon the Termination Date all obligations under the Loan Documents and all security interests created by the Security Documents shall be automatically released. Any such release shall not in any manner discharge, affect, or impair the Secured Obligations (other than those being discharged or released) or any Liens (other than those being discharged or 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 comprised of Excluded Assets or otherwise released in accordance with the provisions of the Loan Documents. In connection with any termination or release pursuant to this Section 9.14, without the further consent of any Lender, Issuing Bank or other Secured Party, the Administrative Agent or the Collateral Agent, as the case may be, shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence or to file or register in any office such termination or release so long as the Borrower or applicable Loan Party shall have provided the Administrative Agent or the Collateral Agent, as the case may be, such certifications or documents as the Administrative Agent or the Collateral Agent, as the case may be, shall reasonably request in order to demonstrate compliance with this Agreement. The Administrative Agent or the Collateral Agent, as the case may be, will, at the Borrower's expense, execute and deliver to the applicable Loan Party or to file or register in any office such documents as such Loan Party may reasonably request to subordinate its Lien on any property granted to or held by the Administrative Agent or the Collateral Agent, as the case may be, under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(ii) (but only pursuant to clauses (d) and (j) of the definition of "Permitted Encumbrances"), (iv), (v), (xi), (xii), (xxii) (but only with respect to any such liens securing Indebtedness permitted under Section 6.01(a)(viii)), (xxiii), (xxix) or (xxxv).

(b) Each of the Lenders and each of the Issuing Banks irrevocably authorizes the Administrative Agent or the Collateral Agent, as the case may be, to (i) provide any release or evidence of release, termination or subordination contemplated by this Section 9.14 (and upon request by the Administrative Agent or the Collateral Agent, as the case may be, at any time, the Required Lenders will confirm in writing the Administrative Agent's authority or the Collateral Agent's authority, as the case may be, to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under any Loan Document, in each case in accordance with the terms of the Loan Documents and this Section 9.14), (ii) enter into subordination or intercreditor agreements with respect to Indebtedness to the extent the Administrative Agent or Collateral Agent is otherwise contemplated herein as being a party to such intercreditor or subordination agreement, in each case to the extent such agreements, at the time they are first entered into, are substantially consistent with the terms set forth on Exhibit E-1, E-2 or E-3 annexed hereto, together with (A) any immaterial changes and (B) material changes thereto in light of prevailing market conditions, which material changes shall 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 and/or Collateral 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 and/or Collateral Agent's execution thereof, in each case in form and substance reasonably satisfactory to the Administrative Agent and/or Collateral Agent (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans); and (iii) enter into and sign for and on behalf of the Lenders as Secured Parties the Security Documents for the benefit of the Lenders and the other Secured Parties.

#### SECTION 9.15 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks 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 Joint Lead Arrangers, the Issuing Banks 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, that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto and it is not relying on the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks or the Lenders for such advice, 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 of the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings, any of their respective Affiliates or any other Person and (B) none of the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders 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 Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and 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 Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders 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, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Joint Lead 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 9.16 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 the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

#### SECTION 9.17 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower or any other Loan Party in respect of any such sum due from it to the Secured Parties hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Requirements of Law).

#### SECTION 9.18 Intercreditor Agreement.

Each Secured Party hereby agrees that the Administrative Agent and/or Collateral Agent may enter into the Closing Date Intercreditor Agreement and any other intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01, any applicable Liens on Collateral permitted pursuant to Section 6.02 and, in each case, together with the defined terms referenced therein) on its behalf and agrees to be bound by the terms thereof and, in each case, consents and agrees to the appointment of Barclays Bank PLC (or its affiliated designee, representative, agent or successor) on its behalf as collateral agent, respectively, thereunder. Each Lender (a) understands, acknowledges and agrees that Liens shall be created on the Collateral pursuant to the Second Lien Loan Documents, which Liens shall be subject to the terms and conditions of the Closing Date Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Closing Date Intercreditor Agreement or any other applicable Intercreditor Agreement (if entered into) and (c) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Closing Date Intercreditor Agreement and, if applicable, any other Intercreditor Agreement (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements (subject, if applicable, to the last sentence of Section 9.02(b)), and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof).

#### SECTION 9.19 Cashless Settlement.

Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**HOYA INTERMEDIATE, LLC**  
a Delaware limited liability company

as Holdings

By: /s/ Frank Petito  
Name: Frank Petito  
Title: Chief Financial Officer

**HOYA MIDCO, LLC**  
a Delaware limited liability company

as Borrower

By: /s/ Frank Petito  
Name: Frank Petito  
Title: Chief Financial Officer

*[Signature Page to Project Cubs First Lien Credit Agreement]*

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**BARCLAYS BANK PLC,**  
as Administrative Agent,  
an Issuing Bank and Swing Line Lender

By: /s/ Robert Chen  
Name: Robert Chen  
Title: Managing Director

*[Signature Page to Project Cubs First Lien Credit Agreement]*

**BARCLAYS BANK PLC,**  
as a Lender

By: /s/ Robert Chen  
Name: Robert Chen  
Title: Managing Director

*[Signature Page to Project Cubs First Lien Credit Agreement]*



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**ROYAL BANK OF CANADA,**  
as a Lender and an Issuing Bank

By: /s/ Kamran Khan  
Name: Kamran Khan  
Title: Authorized Signatory

*[Signature Page to Project Cubs First Lien Credit Agreement]*

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**SUNTRUST BANK,**  
as a Lender and an Issuing Bank

By: /s/ Michael Chanin

Name: Michael Chanin

Title: Vice President

*[Signature Page to Project Cubs First Lien Credit Agreement]*

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**JEFFERIES FINANCE LLC,**  
as a Lender and Issuing Bank

By: /s/ Brian Buoye  
Name: Brian Buoye  
Title: Managing Director

**AMENDMENT NO. 1 TO FIRST LIEN CREDIT AGREEMENT**

AMENDMENT NO. 1, dated as of March 28, 2018 (this "Amendment"), by and among Hoya Midco, LLC (the "Borrower"), Hoya Intermediate, LLC ("Holdings"), the other Loan Parties listed on the signature pages hereto, each of the Lenders, Barclays Bank PLC, as the New Lender (as defined below), and Barclays Bank PLC, as Administrative Agent (in such capacity, the "Administrative Agent"), Collateral Agent, an Issuing Bank and Swing Line Lender, to the First Lien Credit Agreement, dated as of June 30, 2017 among the Borrower, Holdings, the Administrative Agent, and each lender from time to time party thereto (as amended prior to the date hereof, the "Credit Agreement" and the Credit Agreement, as amended by this Amendment, the "Amended Credit Agreement"). Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement unless otherwise defined herein.

**WITNESSETH:**

WHEREAS, the Borrower desires to amend the Credit Agreement on the terms set forth herein;

WHEREAS, Section 9.02 of the Credit Agreement provides that the Borrower may amend the Credit Agreement with the consent of the Administrative Agent and the requisite number of Lenders as set forth therein;

WHEREAS, each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate) have been appointed as Amendment No. 1 Arrangers (as defined below) and are acting as joint lead arrangers and bookrunners for this Amendment (in such capacities, the "Amendment No. 1 Arrangers");

WHEREAS, the Lenders party to this Amendment constitute Required Lenders under the Credit Agreement on the Amendment No. 1 Effective Date;

WHEREAS, (i) each Lender holding Initial Term Loans outstanding immediately prior to the Amendment No. 1 Effective Date (the "Existing Term Loans") that executes and delivers a consent to this Amendment (each, a "Consenting Term Lender") substantially in the form of Exhibit A hereto (an "Amendment No. 1 Term Consent") shall be deemed, upon effectiveness of this Amendment, to have consented to the amendments to the Credit Agreement set forth herein, including, without limitation, the reduction of the Applicable Rate with respect to its outstanding Existing Term Loans and (x) if such Consenting Term Lender elects the "Cashless Amendment" option on the Amendment No. 1 Term Consent, such Consenting Term Lender will retain its Existing Term Loans as amended by this Amendment No. 1 and (y) if such Consenting Term Lender elects the "Post-Closing Settlement" option on the Amendment No. 1 Term Consent, the entire amount of such Consenting Term Lender's Existing Term Loans will be assigned to such Consenting Term Lender, its affiliate or the New Lender (as defined below) at par on the Amendment No. 1 Effective Date (as defined below) (it being understood that no Assignment and Assumption shall be required to be executed by such Consenting Term Lender to effect such assignment) and following the Amendment No. 1 Effective Date such Consenting Term Lender shall purchase by assignment Initial Term Loans in an equal principal amount as its Existing Term Loans or such lesser amount allocated to such Consenting Term Lender by the Amendment No. 1 Arrangers, (ii) each Lender

holding Revolving Commitments immediately prior to the Amendment No. 1 Effective Date (the “Existing Revolving Commitments” and, together with the Existing Term Loans, the “Existing Loans”) that executes and delivers a signature page hereto (each, a “Consenting Revolving Lender” and, together with each Consenting Term Lender, collectively, the “Consenting Lenders”) shall be deemed, upon effectiveness of this Amendment, to have consented to the amendments to the Credit Agreement set forth herein, including, without limitation, the reduction of the Applicable Rate with respect to any Revolving Loans outstanding under its Existing Revolving Commitments immediately prior to the Amendment No. 1 Effective Date (the “Existing Revolving Loans”) and such Consenting Revolving Lender will retain its Existing Revolving Loans and Existing Revolving Commitments as amended by this Amendment No. 1, (iii) each Lender holding Existing Loans that does not execute and deliver an Amendment No. 1 Term Consent (each, a “Non-Consenting Lender”), shall be required to assign the entire amount of its Existing Loans to Barclays Bank PLC (in such capacity, the “New Lender”) in accordance with Section 9.02 of the Credit Agreement and such New Lender shall become a Lender under the Amended Credit Agreement with respect to the Existing Loans so assigned and (iv) on the Amendment No. 1 Effective Date, the Borrower shall have paid to the Administrative Agent, for the ratable benefit of the existing Lenders, all accrued and unpaid interest to, but not including, the Amendment No. 1 Effective Date, with respect to the Existing Term Loans;

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I

### Amendments

Section 1.1. Amendments. Subject to satisfaction (or waiver) of the conditions set forth in Article II hereof, on the Amendment No. 1 Effective Date, the Credit Agreement is hereby amended as follows:

(a) The following defined terms shall be added to Section 1.01 of the Credit Agreement in alphabetical order:

“**Amendment No. 1**” means Amendment No. 1 to this Agreement, dated as of March 28, 2018.

“**Amendment No. 1 Arrangers**” means each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate), as joint lead arrangers and bookrunners in connection with Amendment No. 1.

“**Amendment No. 1 Consent**” has the meaning assigned to such term in the recitals to Amendment No. 1.

“**Amendment No. 1 Effective Date**” means March 28, 2018, the date of effectiveness of Amendment No. 1.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**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.

(b) The definition of “Agent” in Section 1.01 of the Credit Agreement is hereby amended by inserting after “each Joint Lead Arranger,” the following: “each Amendment No. 1 Arranger,”.

(c) The definition of “Applicable Rate” in Section 1.01 of the Credit Agreement is hereby amended by deleting such definition and replacing it with the following:

““**Applicable Rate**” means, for any day, (x) with respect to any Initial Term Loan, (i) 2.50% per annum, in the case of an ABR Loan, or (ii) 3.50% per annum, in the case of a Eurodollar Loan and (y) with respect to any Revolving Loan, (i) from the Amendment No. 1 Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Amendment No. 1 Effective Date, (A) 2.50% per annum, in the case of an ABR Loan, or (B) 3.50% per annum, in the case of a Eurodollar Loan, and (ii) thereafter, the applicable percentage per annum set forth below, as determined by reference to the Senior Secured First Lien Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

<u>Pricing Level</u>	<u>Applicable Rate</u>		<u>Eurodollar Loans</u>	<u>ABR Loans</u>
	<u>Senior Secured First Lien Net Leverage Ratio</u>			
1	> 4.50:1.00		3.50%	2.50%
2	£ 4.50:1.00 and > 4.00:1.00		3.25%	2.25%
3	£ 4.00:1.00		3.00%	2.00%

Any increase or decrease in the Applicable Rate resulting from a change in the Senior Secured 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 5.01(d); provided that if such Compliance Certificate is not delivered in accordance with Section 5.01(d), the Applicable Rate with respect to Revolving Loans shall be set at the margin in the row styled “Pricing Level 1” as of the first day of the month following the end of the quarter for which the Compliance Certificate was not delivered until the date on which such Compliance Certificate is delivered (on which date, the Applicable Rate with respect to Revolving Loans shall be set at the margin based upon the calculations disclosed by such certification).

In the event that the Compliance Certificate setting forth the Senior Secured First Lien Net Leverage Ratio previously delivered pursuant to Section 5.01(d) was inaccurate (and such inaccuracy is discovered while any Revolving Commitments are outstanding), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Rate for the Revolving Loans for any period (an “Applicable Period”) than the Applicable Rate for Revolving Loans applied for such Applicable Period, then, to the extent any Revolving Commitments are outstanding at such time, (i) the Borrower shall as soon as practicable deliver to the Administrative Agent the correct certified calculation of the Senior Secured First Lien Net Leverage Ratio for such Applicable Period, (ii) the

Applicable Rate for Revolving Loans for such Applicable Period shall be determined as if the level for such higher Applicable Rate for Revolving Loans was applicable for such Applicable Period, and (iii) the Borrower shall within ten Business Days of written demand thereof by the Administrative Agent pay to the Administrative Agent the accrued additional interest with respect to Revolving Loans owing as a result of such increased Applicable Rate for the Revolving Loans for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement.”

(d) The definition of “Loan Documents” in Section 1.01 of the Credit Agreement is hereby amended by inserting after “any Refinancing Amendment,” the following: “Amendment No. 1,”.

(e) The reference to “Effective Date” in Section 2.11(a)(i) of the Credit Agreement is hereby replaced with a reference to “Amendment No. 1 Effective Date”.

(f) Section 2.13 of the Credit Agreement is hereby amended by adding the following new clause (f) thereto:

“(f) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a) or (b) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14 have not arisen but the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor (acting reasonably) to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.”

(g) The reference to “Effective Date” in Section 2.21(b) of the Credit Agreement is hereby replaced with a reference to “Amendment No. 1 Effective Date”.

(h) Section 7.03 of the Credit Agreement is hereby amended by deleting the second paragraph and replacing it as follows:

“SECOND, to the payment in full of the Secured Obligations that constitute Senior Secured First Lien Indebtedness (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of such Secured Obligations owed to them on the date of any such distribution); provided that such payment shall be applied (w) first, to the portion of such Secured Obligations constituting accrued and unpaid fees, indemnities and other amounts (other than principal and interest) payable to the Lenders in respect of the Loans, (x) second, to the portion of such Secured Obligations constituting such accrued and unpaid interest in respect of the Loans, (y) third, to all other Secured Obligations;”

(i) Section 8.08 of the Credit Agreement is hereby amended by replacing the word “nor” immediately before “any person named on the cover page” with a comma followed by the words “any Amendment No. 1 Arranger nor”.

(j) Article 9 of the Credit Agreement is hereby amended by adding the following new Section 9.21 thereto:

“Section 9.21 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender under the Credit Agreement and (y) covenants, from the date such Person became a Lender under the Credit Agreement to the date such Person ceases being a Lender party to the Amended Credit Agreement, for the benefit of the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time (“PTEs”), such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Facility Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender under the Credit Agreement and (y) covenants, from the date such Person became a Lender under the Credit Agreement to the date such Person ceases being a Lender under the Amended Credit Agreement, for the benefit of the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:



(i) none of the Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agents under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the obligations under any Loan Document),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is a fiduciary under ERISA or the US Internal Revenue Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agents or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or the Amended Credit Agreement.

(c) The Agents hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing."

## ARTICLE II

### Conditions to Effectiveness

This Amendment shall become effective on the date (the “Amendment No. 1 Effective Date”) on which the following conditions precedent are satisfied (or waived by the Administrative Agent):

(a) The Administrative Agent (or its counsel) shall have received from (i) the New Lender, (ii) the Administrative Agent, (iii) each Revolving Lender and (iv) each Loan Party, (x) a counterpart of this Amendment signed on behalf of such party or (y) written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement. The Administrative Agent (or its counsel) shall have received from each Consenting Lender, constituting at least the Required Lenders immediately prior to giving effect to the Amendment No. 1 Effective Date, a duly executed Amendment No. 1 Term Consent. Each Non-Consenting Lender shall have executed an Assignment and Assumption assigning all of such Non-Consenting Lender’s Existing Loans to the New Lender or shall have been deemed to have executed such an Assignment and Assumption in accordance with Sections 9.02(c) and 9.04(b)(ii) of the Credit Agreement.

(b) The Administrative Agent shall have received (i) such customary resolutions or other action of each Loan Party as the Administrative Agent may require evidencing the authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and (ii) with respect to Borrower and Holdings, such documents and certifications (including, without limitation, incumbency certificates, Organization Documents and, if applicable, good standing certificates) as the Administrative Agent may reasonably require to evidence that each of the Borrower and Holdings is duly organized or formed, and that each of the Borrower and Holdings is validly existing and in good standing and (iii) bring down good standing certificates of each Loan Party dated as of a recent date.

(c) Holdings, the Borrower and each of the Subsidiary Guarantors shall have provided the documentation and other information reasonably requested in writing at least five (5) days prior to the Amendment No. 1 Effective Date by the Consenting Lenders as they reasonably determine is required by regulatory authorities in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least three (3) Business Days prior to the Amendment No. 1 Effective Date (or such shorter period as the Administrative Agent shall otherwise agree).

(d) The Borrower shall have paid to the Administrative Agent for the ratable account of the Lenders holding Existing Loans all accrued and unpaid interest on such Existing Loans to, but not including, the Amendment No. 1 Effective Date.

(e) All costs, fees, expenses (including without limitation legal fees and expenses, title premiums, survey charges and recording taxes and fees) and other compensation separately agreed in writing to be payable to the Amendment No. 1 Arrangers and the Administrative Agent shall have been paid to the extent due (and, in the case of expenses, invoiced in reasonable detail at least two Business Days prior to the Amendment No. 1 Effective Date).

(f) Immediately after giving effect to this Amendment and the transactions contemplated hereby, (A) the representations and warranties of the Borrower and each other Loan Party contained in Article III of the Credit Agreement and each other Loan Document are true and

correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the Amendment No. 1 Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date and (B) no Default exists. A Responsible Officer of the Borrower shall have delivered a certificate certifying as to the matters set forth in clauses (A) and (B).

(g) The Administrative Agent shall have received an opinion of Latham & Watkins LLP, special New York counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent and the Amendment No. 1 Arrangers.

### ARTICLE III

#### Miscellaneous

Section 3.1. Continuing Effect; No Other Amendments or Waivers. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or any other Loan Document, and 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 provision of the Credit Agreement or any other Loan Document, all of which are hereby ratified and affirmed in all respects and shall continue in full force and effect. Except as expressly waived hereby, the provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect in accordance with their terms. 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. This Amendment shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents. All references to the Credit Agreement in any document, instrument, agreement, or writing shall from after the Amendment No. 1 Effective Date be deemed to refer to the Credit Agreement as amended hereby, and, as used in the Credit Agreement, the terms "Agreement," "herein," "hereafter," "hereunder," "hereto" and words of similar import shall mean, from and after the Amendment No. 1 Effective Date, the Credit Agreement as amended hereby.

Section 3.2. New Lender. The New Lender hereby consents to this Amendment. Each of the New Lender, the Administrative Agent and the Borrower acknowledges and agrees that, upon the execution and delivery of an Assignment and Assumption signed by the New Lender, as assignee, and each Non-Consenting Lender, as assignor (or deemed to have been signed by such Non-Consenting Lender pursuant to Sections 9.02(c) and 9.04(b) (ii) of the Amended Credit Agreement), the New Lender (i) shall become a "Lender" under, and for all purposes, and subject to and bound by the terms, of the Amended Credit Agreement and other Loan Documents with Initial Term Loans and Revolving Commitments in an amount equal to the aggregate principal amount of all Existing Term Loans and Existing Revolving Commitments, as applicable, of all Non-Consenting Lenders, (ii) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Amended Credit Agreement and the other Loan Documents as are delegated to the Administrative by the terms thereof, together with such powers as are reasonably incidental thereto and (iii) shall perform all the obligations of and shall have all rights of a Lender thereunder. Each Non-Consenting Lender that does not execute such Assignment and Assumption shall be deemed to have executed and delivered such Assignment and Assumption in accordance with Sections 9.02(c) and 9.04(b)(ii) of the Credit Agreement. After the assignment (or deemed assignment) of Initial Term Loans

and Revolving Commitments by each Non-Consenting Lender to the New Lender as contemplated above, the New Lender and the Consenting Lenders shall together hold all of the Initial Term Loans and Revolving Commitments.

Section 3.3. Counterparts. This Amendment may be executed in any number of separate counterparts by the parties hereto (including by telecopy or via electronic mail), each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument.

Section 3.4. GOVERNING LAW. THIS AMENDMENT AND ALL MATTERS ARISING OUT OF OR RELATING IN ANY WAY WHATSOEVER TO THIS AMENDMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 3.5. Reaffirmation. Each Loan Party hereto expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof and on the Amendment No. 1 Effective Date, that its guarantee of the Obligations under the Guarantee Agreement and its grant of Liens on the Collateral to secure the Obligations pursuant to each Collateral Agreement to which it is a party, in each case, continues in full force and effect and extends to the obligations of the Loan Parties under the Loan Documents (including the Credit Agreement as amended by this Amendment) subject to any limitations set out in the Credit Agreement (as so amended) and any other Loan Document applicable to that Loan Party. Neither the execution, delivery, performance or effectiveness of this Amendment nor the modification of the Credit Agreement effected pursuant hereto: (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action be taken to perfect or to maintain the perfection of such Liens.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

**HOYA MIDCO, LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**HOYA INTERMEDIATE, LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**VIVID SEATS LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**ACTCO LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**TICKET WEBSITE LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

*[Signature Page to Project Cubs - Amendment No. 1 to First Lien Credit Agreement]*

---

**ACTIVE TICKET COMPANY LP**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**VIVID HOSPITALITY LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**WORLD TICKET SOURCE, LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**SKYBOX TICKET RESALE PLATFORM LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**TICKET FULFILLMENT SERVICES LP**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

*[Signature Page to Project Cubs - Amendment No. 1 to First Lien Credit Agreement]*

**BARCLAYS BANK PLC**, as Administrative Agent,  
Collateral Agent, an Issuing Bank, Swing Line Lender and  
Lender

By: /s/ Robert Chen

Name: Robert Chen

Title: Managing Director

**ROYAL BANK OF CANADA**, as a Revolving Lender

By: /s/ Kamran Khan

Name: Kamran Khan

Title: Authorized Signatory

**SUNTRUST BANK**, as a Revolving Lender

By: /s/ Marshall T. Magnum, III

Name: Marshall T. Magnum, III

Title: Director

**JEFFERIES FINANCE LLC**, as a Revolving Lender

By: /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

*[Signature Page to Project Cubs - Amendment No. 1 to First Lien Credit Agreement]*

---

BARCLAYS BANK PLC, as the New Lender

By: /s/ Robert Chen

Name: Robert Chen

Title: Managing Director

*[Signature Page to Project Cubs - Amendment No. 1 to First Lien Credit Agreement]*



**AMENDMENT NO. 2 TO FIRST LIEN CREDIT AGREEMENT**

AMENDMENT NO. 2, dated as of July 2, 2018 (this “Amendment”), by and among Hoya Midco, LLC (the “Borrower”), Hoya Intermediate, LLC (“Holdings”), the other Loan Parties listed on the signature pages hereto, each of the Lenders and Barclays Bank PLC, as Administrative Agent (in such capacity, the “Administrative Agent”), Collateral Agent, an Issuing Bank and Swing Line Lender, to the First Lien Credit Agreement, dated as of June 30, 2017 among the Borrower, Holdings, the Administrative Agent, and each lender from time to time party thereto (as amended prior to the date hereof, the “Credit Agreement” and the Credit Agreement, as amended by this Amendment, the “Amended Credit Agreement”). Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement unless otherwise defined herein.

**WITNESSETH:**

WHEREAS, the Borrower has requested an Incremental Term Increase in an aggregate principal amount of \$115,000,000, which will be available on the Amendment No. 2 Effective Date (as defined below), and the loans thereunder (the “New Term Loans”) shall constitute Incremental Term Loans, Incremental Loans, Loans, Initial Term Loans and Term Loans (as applicable) for all purposes of the Credit Agreement and other Loan Documents, the proceeds of which will be used (i) to consummate a partial repayment of amounts outstanding under the Second Lien Credit Agreement and/or (ii) for working capital and general corporate purposes (the foregoing clauses (i) and (ii), together with the New Term Loans, the “Transactions”);

WHEREAS, the Borrower has hereby notified the Administrative Agent that it is requesting the establishment of an Incremental Term Increase pursuant to Section 2.20 of the Credit Agreement;

WHEREAS, this Amendment constitutes an Incremental Facility Amendment pursuant to Section 2.20 of the Credit Agreement;

WHEREAS, each Lender party hereto (each, an “Incremental Term Lender”) is willing to make New Term Loans in the amounts set forth opposite such Incremental Term Lender’s name on Appendix A hereto;

WHEREAS, each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate) have been appointed as Amendment No. 2 Arrangers (as defined below) and are acting as joint lead arrangers and bookrunners for this Amendment (in such capacities, the “Amendment No. 2 Arrangers”);

WHEREAS, the Borrower wishes to (a) incur the New Term Loans and (b) make certain amendments to the Credit Agreement to provide for the incurrence of the New Term Loans;

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

Amendments

Section 1.1. Amendments. Subject to satisfaction (or waiver) of the conditions set forth in Article II hereof, on the Amendment No. 2 Effective Date, the Credit Agreement is hereby amended as follows:

(a) The following defined terms shall be added to Section 1.01 of the Credit Agreement in alphabetical order:

“**2018 Term Loans**” means the “New Term Loans” as defined in Amendment No. 2.

“**Amendment No. 2**” means Amendment No. 2 to this Agreement, dated as of July 2, 2018.

“**Amendment No. 2 Arrangers**” means each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate), as joint lead arrangers and bookrunners in connection with Amendment No. 2.

“**Amendment No. 2 Effective Date**” means July 2, 2018, the date of effectiveness of Amendment No. 2 and the funding of the 2018 Term Loans thereunder.

(b) The definition of “Agent” in Section 1.01 of the Credit Agreement is hereby amended by inserting after “each Amendment No. 1 Arranger,” the following: “each Amendment No. 2 Arranger,”.

(c) The definition of “Class” in Section 1.01 is hereby amended by inserting after “construed to be in different Classes.” the following: For the avoidance of doubt, on and after the Amendment No. 2 Effective Date, the Initial Term Loans shall be considered part of the same Class as the 2018 Term Loans made on such date.

(d) The definition of “Initial Term Loans” in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Initial Term Loans” means the Loans made pursuant to Section 2.01(a) and on and after the Amendment No. 2 Effective Date shall include the 2018 Term Loans incurred under Amendment No. 2. The aggregate principal amount of Initial Term Loans outstanding immediately after giving effect to the 2018 Term Loans incurred and funded on the Amendment No. 2 Effective Date is \$634,750,000.

(e) The definition of “Loan Documents” in Section 1.01 of the Credit Agreement is hereby amended by inserting after “Amendment No.1,” the following: “Amendment No. 2,”.

(f) Section 2.10(a) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

“Subject to adjustment pursuant to paragraph (c) of this Section 2.10, the Borrower shall repay Initial Term Loans on the last day of each March, June, September and December (commencing on the last day of the first full fiscal quarter following the Effective Date) in the principal amount of Term Loans as follows; provided that if any such date is not a Business Day, such payment shall be due on the next preceding Business Day:

Date	Amount
The last day of each fiscal quarter starting with the fiscal quarter ended September 30, 2017 and ending with the fiscal quarter ended June 30, 2018.	\$1,312,500.00
The last day of each fiscal quarter starting with the fiscal quarter ended September 30, 2018 and ending with the fiscal quarter most recently ended prior to the Term Maturity Date.	\$1,602,904.04

(g) The reference to “Amendment No. 1 Effective Date” in Section 2.11(a)(i) of the Credit Agreement is hereby replaced with a reference to “Amendment No. 2 Effective Date”.

(h) The reference to “Amendment No. 1 Effective Date” in Section 2.21(b) of the Credit Agreement is hereby replaced with a reference to “Amendment No. 2 Effective Date”.

(i) Section 8.08 of the Credit Agreement is hereby amended by replacing the word “nor” immediately before “any person named on the cover page” with a comma followed by the words “any Amendment No. 2 Arranger nor”.

## ARTICLE II

### Conditions to Effectiveness

This Amendment shall become effective on the date (the “Amendment No. 2 Effective Date”) on which the following conditions precedent are satisfied (or waived by the Administrative Agent):

(a) The Administrative Agent (or its counsel) shall have received from (i) the Administrative Agent, (ii) each Incremental Term Lender and (iii) each Loan Party, (x) a counterpart of this Amendment signed on behalf of such party or (y) written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received (i) such customary resolutions or other action of each Loan Party as the Administrative Agent may require evidencing the authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and (ii) with respect to Borrower and Holdings, such documents and certifications (including, without limitation, incumbency certificates, Organization Documents and, if applicable, good standing certificates) as the Administrative Agent may reasonably require

to evidence that each of the Borrower and Holdings is duly organized or formed, and that each of the Borrower and Holdings is validly existing and in good standing and (iii) bring down good standing certificates of each Loan Party dated as of a recent date.

(c) Holdings, the Borrower and each of the Subsidiary Guarantors shall have provided the documentation and other information reasonably requested in writing at least five (5) days prior to the Amendment No. 2 Effective Date by the Incremental Term Lenders as they reasonably determine is required by regulatory authorities in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least three (3) Business Days prior to the Amendment No. 2 Effective Date (or such shorter period as the Administrative Agent shall otherwise agree).

(d) All costs, fees, expenses (including without limitation legal fees and expenses, title premiums, survey charges and recording taxes and fees) and other compensation separately agreed in writing to be payable to the Amendment No. 2 Arrangers and the Administrative Agent shall have been paid to the extent due (and, in the case of expenses, invoiced in reasonable detail at least two Business Days prior to the Amendment No. 2 Effective Date).

(e) Immediately after giving effect to this Amendment and the transactions contemplated hereby, (A) the representations and warranties of the Borrower and each other Loan Party contained in Article III of the Credit Agreement and each other Loan Document are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the Amendment No. 2 Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date and (B) no Default exists. A Responsible Officer of the Borrower shall have delivered a certificate certifying as to the matters set forth in clauses (A) and (B).

(f) The Administrative Agent shall have received an opinion of Latham & Watkins LLP, special New York counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent and the Amendment No. 2 Arrangers.

(g) The Administrative Agent shall have received a certificate from a Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions, substantially in the form of Exhibit P of the Credit Agreement.

(h) The Administrative Agent shall have received a Borrowing Request in accordance with the requirements of the Credit Agreement.

(i) To the extent the Borrower qualifies as a “legal entity customer” under 31 C.F.R. § 1010.230, the Borrower shall have delivered to the Administrative Agent, a certification regarding beneficial ownership with respect to itself as required by 31 C.F.R. § 1010.230.

### ARTICLE III

#### Miscellaneous

Section 3.1. Continuing Effect; No Other Amendments or Waivers. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute

a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or any other Loan Document, and 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 provision of the Credit Agreement or any other Loan Document, all of which are hereby ratified and affirmed in all respects and shall continue in full force and effect. Except as expressly waived hereby, the provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect in accordance with their terms. 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. This Amendment shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents. All references to the Credit Agreement in any document, instrument, agreement, or writing shall from after the Amendment No. 2 Effective Date be deemed to refer to the Credit Agreement as amended hereby, and, as used in the Credit Agreement, the terms "Agreement," "herein," "hereafter," "hereunder," "hereto" and words of similar import shall mean, from and after the Amendment No. 2 Effective Date, the Credit Agreement as amended hereby.

Section 3.2. New Lender. Each Lender who was not previously a Lender under the Credit Agreement, (i) confirms that it has received a copy of the Credit Agreement and the other Loan Documents and the exhibits and schedules thereto, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment; (ii) agrees that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any other Lender or Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iii) appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to the Administrative Agent or the Collateral Agent, as the case may be, by the terms thereof, together with such powers as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender, as the case may be.

Section 3.3. Counterparts. This Amendment may be executed in any number of separate counterparts by the parties hereto (including by telecopy or via electronic mail), each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument.

Section 3.4. GOVERNING LAW. THIS AMENDMENT AND ALL MATTERS ARISING OUT OF OR RELATING IN ANY WAY WHATSOEVER TO THIS AMENDMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 3.5. Reaffirmation. Each Loan Party hereto expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof and on the Amendment No. 2 Effective Date, that its guarantee of the Obligations under the Guarantee Agreement and its grant of Liens on the Collateral to secure the Obligations pursuant to each Collateral Agreement to which it is a party, in each case, continues in full force and effect and extends to the obligations of the Loan Parties under the Loan Documents (including the Credit Agreement as amended by this Amendment) subject to any limitations set out in the Credit Agreement (as so amended) and any other Loan Document applicable to that Loan Party. Neither the execution, delivery, performance or effectiveness of this Amendment nor the

modification of the Credit Agreement effected pursuant hereto: (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action be taken to perfect or to maintain the perfection of such Liens.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

**HOYA MIDCO, LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**HOYA INTERMEDIATE, LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**VIVID SEATS LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**ACTCO LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**TICKET WEBSITE LLC**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

**ACTIVE TICKET COMPANY LP**

By: /s/ Frank Petito  
Name: Frank Petito  
Title Chief Financial Officer

---

**VIVID HOSPITALITY LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**WORLD TICKET SOURCE, LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**SKYBOX TICKET RESALE PLATFORM LLC**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

**TICKET FULFILLMENT SERVICES LP**

By: /s/ Frank Petito

Name: Frank Petito

Title Chief Financial Officer

*[Signature Page to Project Cubs - Amendment No. 2 to First Lien Credit Agreement]*



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**BARCLAYS BANK PLC**, as Administrative Agent,  
Collateral Agent, an Issuing Bank, Swing Line Lender and  
Lender

By: /s/ Robert Chen

Name: Robert Chen

Title: Managing Director

**BARCLAYS BANK PLC**,  
as the Incremental Term Lender

By: /s/ Robert Chen

Name: Robert Chen

Title: Managing Director

*[Signature Page to Project Cubs - Amendment No. 2 to First Lien Credit Agreement]*

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**Appendix A**

	<b><u>Lender</u></b>	<b><u>Amount</u></b>
Barclays Bank PLC		\$115,000,000

**AMENDMENT NO. 3 TO FIRST LIEN CREDIT AGREEMENT**

AMENDMENT NO. 3, dated as of May 22, 2020 (this "Amendment"), delivered by Hoya Midco, LLC (the "Borrower") and received and acknowledged by Barclays Bank PLC, as Administrative Agent (in such capacity, the "Administrative Agent"), to the First Lien Credit Agreement, dated as of June 30, 2017 among the Borrower, Holdings, the Administrative Agent, and each lender from time to time party thereto (as amended prior to the date hereof, the "Credit Agreement" and the Credit Agreement, as amended by this Amendment, the "Amended Credit Agreement"). Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement unless otherwise defined herein.

**W I T N E S S E T H:**

WHEREAS, the Borrower has notified the Administrative Agent that, on or substantially concurrent with the Amendment No. 3 Effective Date (as defined below), it will incur \$260,000,000 of Incremental Equivalent Debt (the "New Debt") pursuant to Section 6.01(a)(xxiii) of the Credit Agreement (such incurrence, the "New Debt Incurrence");

WHEREAS, in connection with the New Debt Incurrence, the Borrower has hereby notified the Administrative Agent that certain terms and conditions of the New Debt (excluding pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) (such terms and conditions, the "New Debt Terms") are materially more favorable (when taken as a whole) to the lenders providing the New Debt than the corresponding terms and conditions of the Credit Agreement (when taken as a whole) are to the Lenders;

WHEREAS, in connection with the New Debt Incurrence, in accordance with the definition of "Required Additional Debt Terms" set forth in the Credit Agreement, the Borrower has notified the Administrative Agent that the Lenders shall receive the benefit of the New Debt Terms and the Credit Agreement shall be amended to incorporate such New Debt Terms;

NOW, THEREFORE, the parties hereto hereby agree as follows:

**ARTICLE I****Amendments**

Subject to satisfaction of the conditions set forth in Article II hereof, on the Amendment No. 3 Effective Date, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Annex I hereto.

**ARTICLE II****Conditions to Effectiveness**

This Amendment shall become effective on the date (the "Amendment No. 3 Effective Date") that the Administrative Agent (or its counsel) shall have received from the Borrower a counterpart of this Amendment signed on behalf of the Borrower.

## ARTICLE III

### Miscellaneous

Section 3.1. Continuing Effect; No Other Amendments or Waivers. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or any other Loan Document, and 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 provision of the Credit Agreement or any other Loan Document, all of which are hereby ratified and affirmed in all respects and shall continue in full force and effect. Except as expressly waived hereby, the provisions of the Credit Agreement and the other Loan Documents are and shall remain in full force and effect in accordance with their terms. 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. 3 Effective Date. This Amendment shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents. All references to the Credit Agreement in any document, instrument, agreement, or writing shall from after the Amendment No. 3 Effective Date be deemed to refer to the Amended Credit Agreement, and, as used in the Amended Credit Agreement, the terms "Agreement," "herein," "hereafter," "hereunder," "hereto" and words of similar import shall mean, from and after the Amendment No. 3 Effective Date, the Amended Credit Agreement.

Section 3.2. Counterparts. This Amendment may be executed in any number of separate counterparts by the parties hereto, each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument. Any signature to this Amendment may be delivered by facsimile, electronic mail (including .pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law and shall be as effective as delivery of a manually signed counterpart of this Amendment

Section 3.3. GOVERNING LAW. THIS AMENDMENT AND ALL MATTERS ARISING OUT OF OR RELATING IN ANY WAY WHATSOEVER TO THIS AMENDMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. SECTIONS 9.09 AND 9.10 OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE INTO THIS AGREEMENT *MUTATIS MUTANDIS* AND SHALL APPLY HERETO.

Section 3.4. Reaffirmation. The Borrower expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof and on the Amendment No. 3 Effective Date, that each Loan Party's guarantee of the Obligations under the Guarantee Agreement and each Loan Party's grant of Liens on the Collateral to secure the Obligations pursuant to each Collateral Agreement to which such Loan Party is a party, in each case, continues in full force and effect and extends to the obligations of the Loan Parties under the Loan Documents (including the Credit Agreement as amended by this Amendment) subject to any limitations set out in the Credit Agreement (as so amended) and any other Loan Document applicable to that Loan Party. Neither the execution, delivery, performance or effectiveness of this Amendment nor the modification of the Credit Agreement effected pursuant hereto: (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document,

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and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action be taken to perfect or to maintain the perfection of such Liens.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

**HOYA MIDCO, LLC**

By: /s/ Stanley Chia  
Name: Stanley Chia  
Title: President and Chief Executive Officer

[Signature Page to Amendment No. 3 to First Lien Credit Agreement]

---

**RECEIVED AND ACKNOWLEDGED BY:**

**BARCLAYS BANK PLC**, as Administrative Agent

By: /s/ Martin Corrigan

Name: Martin Corrigan

Title: Vice President

[Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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**Annex I**

See attached.



FIRST LIEN CREDIT AGREEMENT

dated as of

June 30, 2017

among

HOYA INTERMEDIATE, LLC,  
as Holdings,

HOYA MIDCO, LLC,  
as Borrower,

the Lenders and Issuing Banks party hereto

and

BARCLAYS BANK PLC,  
as Administrative Agent, Collateral Agent, an Issuing Bank and Swing Line Lender

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RBC CAPITAL MARKETS,<sup>1</sup> SUNTRUST ROBINSON HUMPHREY, INC. and JEFFERIES  
FINANCE LLC,  
as Joint Lead Arrangers and Joint Bookrunners

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<sup>1</sup> RBC Capital Markets is a brand name for the investment banking businesses of Royal Bank of Canada and its affiliates.

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FIRST LIEN CREDIT AGREEMENT dated as of June 30, 2017 (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) among Hoya Intermediate, LLC, a Delaware limited liability company (“Holdings”), Hoya Midco, LLC, a Delaware limited liability company (the “Borrower”), the Lenders and Issuing Banks party hereto and Barclays Bank PLC, in its capacity as Administrative Agent, Collateral Agent, an Issuing Bank and Swing Line Lender.

Preliminary Statements:

WHEREAS, pursuant to that certain Stock Purchase and Merger Agreement, dated as of May 13, 2017 and Amended and Restated on June 30, 2017 (as amended through the date hereof in accordance with the terms of the Commitment Letter, and together with all exhibits and schedules thereto, collectively, the “Acquisition Agreement”) by and among, *inter alios*, Hoya Topco, LLC, a Delaware limited liability company (the “Company”), GTCR-Cubs Topco Acquisition LLC, a Delaware limited liability company (“GTCR Topco”), as the purchaser, GTCR-Cubs Merger Sub LLC (“Merger Sub”), the Vista Blocker Sellers (as defined therein), Vista Equity Partners Management, LLC and the other parties from time to time party thereto, GTCR Topco, together with the Sponsor and the other Investors, will acquire (the “Acquisition”) all of the outstanding equity interests of the Company; and

WHEREAS, in connection with the Transaction (as defined below) and to provide for the working capital needs and general corporate requirements (including to finance permitted Investments, acquisitions, capital expenditures and Restricted Payments) of Holdings and its Restricted Subsidiaries, the Borrower has requested that (i) the Lenders extend credit in the form of (a) Initial Term Loans in an aggregate principal amount of \$525,000,000 on the Effective Date and (b) Revolving Loans at any time and from time to time prior to the Revolving Maturity Date in an aggregate principal amount of up to \$50,000,000 and (ii) certain other lenders extend credit in the form of Second Lien Term Loans in an aggregate principal amount of \$185,000,000 pursuant to the Second Lien Credit Agreement on the Effective Date.

WHEREAS, the proceeds of the Loans borrowed on the Effective Date and the Second Lien Term Loans borrowed on the Effective Date will be used to (w) finance a portion of the Transaction, (x) fund any upfront fees in connection with the Loans and the Second Lien Term Loans (or, to the extent any fees take the form of original issue discount, such Loans and Second Lien Term Loans will reflect such original issue discount), (y) fund the Refinancing and (z) fund any other Transaction Costs.

WHEREAS, the Borrower has requested that the Issuing Banks issue Letters of Credit to support certain obligations incurred by Holdings and its Restricted Subsidiaries.

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

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

## ARTICLE I

### DEFINITIONS

#### SECTION 1.01 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“2018 Term Loans” means the “New Term Loans” as defined in Amendment No. 2.

“ABR” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(2).

“Acceptable Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Acceptance and Prepayment Notice” means an irrevocable written notice from a Term Lender accepting a Solicited Discounted Prepayment Offer to make a Discounted Term Loan Prepayment at the Acceptable Discount specified therein pursuant to Section 2.11(a)(iii)(D) substantially in the form of Exhibit M.

“Acceptance Date” has the meaning specified in Section 2.11(a)(iii)(D)(2).

“Accepting Lenders” has the meaning specified in Section 2.24(a).

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a “Pro Forma Entity”) for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined as if references to Holdings, the Borrower and the Restricted Subsidiaries in the definition of “Consolidated EBITDA” were references to such Pro Forma Entity and its subsidiaries that will become Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity.

“Acquired Entity or Business” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Acquisition” has the meaning specified in the preliminary statements to this Agreement.

“Acquisition Agreement” has the meaning specified in the preliminary statements to this Agreement.

“Acquisition Documents” means the Acquisition Agreement and all other material definitive agreements relating to the Acquisition, as the same may be amended, restated, modified, supplemented or waived from time to time in accordance with the terms hereof and thereof.

“Acquisition Transaction” means any acquisition (including by merger or consolidation) or similar investment by the Borrower or any Restricted Subsidiary that (x) is not permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or (y) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition, would not provide the Borrower and the other Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such acquisition, as reasonably determined by the Borrower acting in good faith.

“Additional Lender” means any Additional Revolving Lender or any Additional Term Lender, as applicable.

“Additional Revolving Lender” means, at any time, any bank, financial institution or other institutional lender or investor (other than any natural person) that agrees to provide any portion of any (a) Incremental Revolving Commitment Increase pursuant to an Incremental Facility Amendment in accordance with Section 2.20 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Revolving Lender shall be subject to the approval of the Administrative Agent (and, if such Additional Revolving Lender will provide an Incremental Revolving Commitment Increase, each Issuing Bank and the Swing Line Lender), in each case only if such consent would be required under Section 9.04(b) for an assignment of Revolving Loans or Revolving Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval in each case not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“Additional Term Lender” means, at any time, any bank, financial institution or other institutional lender or investor (other than any natural person) that agrees to provide any portion of any (a) Incremental Term Loans pursuant to an Incremental Facility Amendment in accordance with Section 2.20 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Term Lender shall be subject to the approval of the Administrative Agent if such consent would be required under Section 9.04(b) for an assignment of Term Loans or Term Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval in each case not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; provided that (x) with respect to the Initial Term Loans only, the Adjusted LIBO Rate for any Interest Period shall not be less than 1.00% per annum and (y) with respect to the Revolving Loans only, the Adjusted LIBO Rate for any Interest Period shall not be less than 0.00% per annum.

“Administrative Agent” means Barclays Bank PLC, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders in writing.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affected Class” has the meaning specified in Section 2.24(a).

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified. For purposes of this Agreement and the other Loan Documents, Jefferies LLC and its Affiliates shall be deemed to be Affiliates of Jefferies Finance LLC and its Affiliates.

“Affiliated Debt Fund” means any Affiliated Lender that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and with respect to which the Sponsor and investment vehicles managed or advised by the Sponsor that are not engaged primarily in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course do not make investment decisions for such entity.

“Affiliated Lender” means, at any time, any Lender that is any Person (other than Holdings or any of its Subsidiaries) contemplated by the definition of Sponsor at such time.

“Agent” means any of the Administrative Agent, the Collateral Agent, each Joint Lead Arranger, each Amendment No. 1 Arranger, each Amendment No. 2 Arranger, any successors and assigns of the foregoing in such capacity, and “Agents” means two or more of them.

“Agent Parties” has the meaning given to such term in Section 9.01(c).

“Agreement” has the meaning given to such term in the introductory paragraph hereto.

“Agreement Currency” has the meaning assigned to such term in Section 9.17.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1.00% and (c) the Adjusted LIBO Rate for the applicable Loan on such day (or if

such day is not a Business Day, the immediately preceding Business Day) for a deposit in Dollars with a maturity of one (1) month plus 1.00%; provided that, solely for purposes of the foregoing, the Adjusted LIBO Rate for any day shall be calculated using the LIBO Rate on such day at approximately 11:00 a.m. (New York City time) for a deposit in Dollars with a maturity of one (1) month. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternative Currency.” means currencies as may be approved by the Administrative Agent, the Issuing Banks and the applicable Revolving Lenders and/or Issuing Banks that agree to provide Revolving Loans and/or Letters of Credit in such other currencies from time to time.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency, as determined by the Administrative Agent at such time on the basis of the Exchange Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Loan” means a Loan denominated in an Alternative Currency.

“Amendment No. 1” means Amendment No. 1 to this Agreement, dated as of March 28, 2018.

“Amendment No. 1 Arrangers” means each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate), as joint lead arrangers and bookrunners in connection with Amendment No. 1.

“Amendment No. 1 Consent” has the meaning assigned to such term in the recitals to Amendment No. 1.

“Amendment No. 1 Effective Date” means March 28, 2018, the date of effectiveness of Amendment No. 1.

“Amendment No. 2” means Amendment No. 2 to this Agreement, dated as of July 2, 2018.

“Amendment No. 2 Arrangers” means each of Barclays Bank PLC (acting through such of its affiliates or branches as it deems appropriate), RBC Capital Markets (acting through such of its affiliates or branches as it deems appropriate), SunTrust Robinson Humphrey, Inc. (acting through such of its affiliates or branches as it deems appropriate) and Jefferies Finance LLC (acting through such of its affiliates or branches as it deems appropriate), as joint lead arrangers and bookrunners in connection with Amendment No. 2.

“Amendment No. 1 Effective Date” means July 2, 2018, the date of effectiveness of Amendment No. 2 and the funding of the 2018 Term Loans thereunder.

“Applicable Account” means, with respect to any payment to be made to the Administrative Agent hereunder, the account specified by the Administrative Agent from time to time for the purpose of receiving payments of such type.

“Applicable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Applicable Fronting Exposure” means, with respect to any Person that is an Issuing Bank at any time, the sum of (a) the aggregate amount of all Letters of Credit issued by such Person in its capacity as an Issuing Bank (if applicable) that remains available for drawing at such time and (b) the aggregate amount of all LC Disbursements made by such Person in its capacity as an Issuing Bank (if applicable) that have not yet been reimbursed by or on behalf of the Borrower at such time.

“Applicable Percentage” means, at any time with respect to any Revolving Lender, the percentage of the aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time (or, if the Revolving Commitments have terminated or expired, such Lender’s share of the total Revolving Exposure at that time); provided that, at any time any Revolving Lender shall be a Defaulting Lender, “Applicable Percentage” shall mean the percentage of the aggregate Revolving Commitments (disregarding any such Defaulting Lender’s Revolving Commitment) represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments pursuant to this Agreement and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Period” has the meaning assigned to such term in the definition of “Applicable Rate”.

“Applicable Rate” means, for any day, (x) with respect to any Initial Term Loan, (i) 2.50% per annum, in the case of an ABR Loan, or (ii) 3.50% per annum, in the case of a Eurodollar Loan and (y) with respect to any Revolving Loan, (i) from the Amendment No. 1 Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Amendment No. 1 Effective Date, (A) 2.50% per annum, in the case of an ABR Loan, or (B) 3.50% per annum, in the case of a Eurodollar Loan, and (ii) thereafter, the applicable percentage per annum set forth below, as determined by reference to the Senior Secured First Lien Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d):

Pricing Level	Applicable Rate		Eurodollar Loans	ABR Loans
	Senior Secured First Lien Net Leverage Ratio			
1	> 4.50:1.00		3.50%	2.50%
2	£ 4.50:1.00 and > 4.00:1.00		3.25%	2.25%
3	< 4.00:1.00		3.00%	2.00%

Any increase or decrease in the Applicable Rate resulting from a change in the Senior Secured 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 5.01(d); provided that if such Compliance Certificate is not delivered in accordance with Section 5.01(d), the Applicable Rate with respect to Revolving Loans shall be set at the margin in the row styled "Pricing Level 1" as of the first day of the month following the end of the quarter for which the Compliance Certificate was not delivered until the date on which such Compliance Certificate is delivered (on which date, the Applicable Rate with respect to Revolving Loans shall be set at the margin based upon the calculations disclosed by such certification).

In the event that the Compliance Certificate setting forth the Senior Secured First Lien Net Leverage Ratio previously delivered pursuant to Section 5.01(d) was inaccurate (and such inaccuracy is discovered while any Revolving Commitments are outstanding), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Rate for the Revolving Loans for any period (an "Applicable Period") than the Applicable Rate for Revolving Loans applied for such Applicable Period, then, to the extent any Revolving Commitments are outstanding at such time, (i) the Borrower shall as soon as practicable deliver to the Administrative Agent the correct certified calculation of the Senior Secured First Lien Net Leverage Ratio for such Applicable Period, (ii) the Applicable Rate for Revolving Loans for such Applicable Period shall be determined as if the level for such higher Applicable Rate for Revolving Loans was applicable for such Applicable Period, and (iii) the Borrower shall within ten Business Days of written demand thereof by the Administrative Agent pay to the Administrative Agent the accrued additional interest with respect to Revolving Loans owing as a result of such increased Applicable Rate for the Revolving Loans for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement.

"Appropriate Lender" means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant Issuing Banks and (ii) the Revolving Lenders and (c) with respect to the Swing Line Facility, (i) the relevant Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

"Approved Bank" has the meaning assigned to such term in the definition of the term "Permitted Investments".

“Approved Foreign Bank” has the meaning assigned to such term in the definition of “Permitted Investments”.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04(b)), substantially in the form of Exhibit A or any other form reasonably approved by the Administrative Agent.

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor employed 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 2.11(a)(iii)(A); 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 Amount” means, as of any date of determination (the “Reference Date”), a cumulative amount equal to (without duplication):

(a) the greater of \$30,000,000 and 30% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (the “Starter Basket”), plus

(b) an amount equal to (x) the cumulative amount of Excess Cash Flow (which amount shall not be less than zero in any fiscal year and shall not be reduced by any negative Excess Cash Flow) of Holdings and its Restricted Subsidiaries for any fiscal year prior to the Reference Date (commencing with the fiscal year ending December 31, 2020), minus (y) the portion of Excess Cash Flow that has been (or is required to be) applied prior to the Reference Date to the prepayment of Term Loans in accordance with Section 2.11(d), and minus (z) the aggregate amount of voluntary prepayments and repurchases of Term Loans and Senior Secured First Lien Indebtedness to the extent such prepayments and repurchases reduced the Excess Cash Flow payment that would have otherwise been required to be made pursuant to Section 2.11(d) for any period prior to the Reference Date pursuant to the first proviso of Section 2.11(d), plus

(c) to the extent not included in Consolidated Net Income, returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings and its Restricted Subsidiaries on Investments made using the Available Amount and cash received from the sale of Investments made using the Available Amount or pursuant to Section 6.04(g) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiaries to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus



(d) Investments of Holdings, the Borrower or any of the Restricted Subsidiaries in any Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount that has been re-designated as a Restricted Subsidiary or that has been merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary, or the assets of which has been transferred to a Loan Party or any of its Restricted Subsidiaries (up to the fair market value determined in good faith by the Borrower of the Investments of Holdings, the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation), plus

(e) to the extent not included in Consolidated Net Income, the Net Proceeds of a sale or other Disposition of any Investment in an Unrestricted Subsidiary (including the issuance of stock of an Unrestricted Subsidiary), non-Subsidiary joint venture or minority investment made using the Available Amount received by Holdings, the Borrower or any Restricted Subsidiary (or the fair market value of the assets thereof that have been transferred to Holdings, the Borrower or any Restricted Subsidiary), plus

(f) to the extent not included in Consolidated Net Income, dividends, profits, or other distributions, returns on capital or similar amounts received by Holdings, the Borrower or any Restricted Subsidiary from an Investment in an Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount (or from the sale of the assets thereof) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiary to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus

(g) to the extent not included in Consolidated Net Income, the aggregate proceeds and the fair market value (as reasonably determined by the Borrower) of marketable securities or other property received by Holdings, the Borrower or a Restricted Subsidiary since the Effective Date from any Person other than the Borrower or a Restricted Subsidiary (excluding any amount applied as an Available Equity Amount), plus

(h) the aggregate amount of any Retained Declined Proceeds since the Effective Date, to the extent not applied to prepay any pari passu Indebtedness, the Second Lien Term Loans or any other secured or subordinated Junior Financing, as contemplated by Section 2.11(e) and Section 6.07(b).

“Available Equity Amount” means a cumulative amount equal to (without duplication):

(a) the Net Proceeds of new public or private issuances of Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as Cure Amounts and any Qualified Equity Interests issued pursuant to Section 6.04(q)) in Holdings or any parent of Holdings which are contributed to Holdings or the Borrower, plus

(b) capital contributions (excluding capital contributions the proceeds of which will be applied as Cure Amounts) received by Holdings or the Borrower after the Effective Date in cash or Permitted Investments (other than in respect of any Disqualified Equity Interest), plus

(c) the net cash proceeds received by Holdings, the Borrower or any Restricted Subsidiary from Indebtedness and Disqualified Equity Interest issuances issued after the Effective Date and which have been exchanged or converted into Qualified Equity Interests, plus

(d) returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings, the Borrower or any Restricted Subsidiary on Investments made using the Available Equity Amount,

in each case, to the extent such amount is Not Otherwise Applied pursuant to the Available Amount.

“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” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended, or any similar federal or state law for the relief of debtors.

“Basel III” means: (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011 as amended, supplemented or restated; and (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers, board of directors, manager or managing member of such Person or the functional equivalent of the foregoing or any committee thereof duly authorized to act on behalf of such board, manager or managing member, (c) in the case of any partnership, the board of directors or board of managers of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

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

“Borrower” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 5.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by the Borrower to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.11(a)(iii)(B).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by the Borrower of offers for, and the corresponding acceptance by a Term Lender of, a voluntary prepayment of Term Loans at a specified range at a discount to par pursuant to Section 2.11(a)(iii)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by the Borrower of offers for, and the subsequent acceptance, if any, by a Term Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.11(a)(iii)(D).

“Borrowing” means (i) Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (ii) a Swing Line Borrowing, as the context may require.

“Borrowing Minimum” means (i) in the case of Term Loans, \$5,000,000, (ii) in the case of a Eurodollar Revolving Borrowing, the lesser of \$500,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and the remaining Commitments of the applicable Class and (iii) in the case of an ABR Revolving Borrowing, the lesser of \$250,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and the remaining Commitments of the applicable Class.

“Borrowing Multiple” means (i) in the case of Term Loans, \$1,000,000, (ii) in the case of a Eurodollar Revolving Borrowing, \$500,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof) and (iii) in the case of an ABR Revolving Borrowing, \$250,000 (or, if denominated in an Alternative Currency, the Dollar Equivalent thereof).

“Borrowing Request” means (i) a request by the Borrower for a Borrowing in accordance with Section 2.03, (ii) with respect to Letters of Credit, a Letter of Credit Request and (iii) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Requirements of Law to remain closed; provided, that (x) if such day relates to any Eurodollar Loan, means any such day that is also a London Banking Day and (y) if such day relates to any interest rate settings as to a Eurodollar Loan denominated in an Alternative Currency, any fundings, disbursements, settlements or payments in such Alternative Currency, or any other dealings in such Alternative Currency to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capitalized Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP; provided, further, that all obligations of any Person that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect and as applied on the Effective Date (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease) for purposes of this Agreement regardless of any change in GAAP which becomes effective after the Effective Date that would otherwise require such obligation to be recharacterized as a Capitalized Lease.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by Holdings and its Restricted Subsidiaries during such period in respect of 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 Holdings and its Restricted Subsidiaries.

“Cash Management Obligations” means (a) obligations of Holdings, the Borrower or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Cash Management Services” has the meaning assigned to such term in the definition of “Secured Cash Management Obligations”.

“Casualty Event” means any event that gives rise to the receipt by Holdings, the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in an amount in excess of \$20,000,000 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.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Control” means (a) the failure of Holdings prior to an IPO, or, after the IPO, the IPO Entity, directly or indirectly through wholly owned subsidiaries, to own all of the Equity Interests of the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of members of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy, ownership of Equity Interests or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 35% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one or more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the Second Lien Credit Agreement, the documentation governing any Incremental Equivalent Debt, [secured or subordinated](#) Junior Financing or other Material Indebtedness.

For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the

Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered.

“Change in Law” means: (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by the United States, Canada, the European Union, United Kingdom or other foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a “Change in Law”, to the extent enacted, adopted, promulgated, implemented or issued after the date of this Agreement, but only to the extent such rules, regulations, or published interpretations or directives are applied to Holdings and its Subsidiaries by the Administrative Agent or any Lender in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities, including, without limitation, for purposes of Section 2.15.

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Other Revolving Loans, Term Loans, Incremental Term Loans or Other Term Loans, (b) any Commitment, refers to whether such Commitment is a Revolving Commitment, Other Revolving Commitment, Term Commitment or Other Term Commitment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Commitments, Other Term Loans, Other Revolving Commitments (and the Other Revolving Loans made pursuant thereto), Incremental Term Loans that have different terms and conditions shall be construed to be in different Classes. For the avoidance of doubt, on and after the Amendment No. 2 Effective Date, the Initial Term Loans shall be considered part of the same Class as the 2018 Term Loans made on such date.

“Closing Date Intercreditor Agreement” means the Closing Date Intercreditor Agreement dated as of the Effective Date, substantially in the form of Exhibit E-2, between the Administrative Agent, the Second Lien Administrative Agent (and each other Senior Representative for holders of Indebtedness permitted by this Agreement to be secured by the Collateral, that becomes party thereto after the Effective Date), Holdings, the Borrower and the Subsidiary Loan Parties party thereto from time to time.

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

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Security Documents as security for the Secured Obligations.

“Collateral Agent” has the meaning given to such term in Section 8.01(b) and its successors in such capacity as provided in Article VIII.

“Collateral Agreement” means the Collateral Agreement among the Loan Parties party thereto and the Collateral Agent, substantially in the form of Exhibit D.

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

(a) the Administrative Agent shall have received from (i) Holdings, the Borrower and each of the Restricted Subsidiaries (other than any Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Person and (ii) Holdings, the Borrower and each Subsidiary Loan Party either (x) a counterpart of each applicable Security Document duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Subsidiary Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), either (A) to the extent applicable, a supplement to each applicable Security Document, substantially the form specified therein, duly executed and delivered on behalf of such Person or (B) a Security Document, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, to the extent reasonably requested by the Administrative Agent, documents of the type referred to in Section 4.01(d) within the time periods set forth in Sections 5.11 and 5.12;

(b) all outstanding Equity Interests of the Borrower and each Restricted Subsidiary (other than any Equity Interests constituting Excluded Assets) owned by or on behalf of any Loan Party, shall have been pledged, charged or otherwise made subject to security pursuant to the applicable Security Document, and the Administrative Agent shall have received certificates, if any, representing all such Equity Interests to the extent constituting “certificated securities”, together with all certificates, documents of title and other documentary evidence of ownership and undated stock powers or other instruments of transfer with respect thereto endorsed in blank, in each case, to the extent required to perfect the security interest therein in the jurisdiction of the issuer;

(c) if any Indebtedness for borrowed money of Holdings, the Borrower or any Subsidiary in a principal amount of \$20,000,000 or more is owing by such obligor to any Loan Party and such Indebtedness shall be evidenced by a promissory note, such promissory note shall be pledged or otherwise secured pursuant to the applicable Security Document, and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank; provided, however, that the foregoing delivery requirement with respect to any intercompany indebtedness may be satisfied by delivery of an omnibus or global intercompany note executed by all Loan Parties as payees and all such obligors as payors;

(d) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and Intellectual Property Security Agreements with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral, for the filing with the United States Patent and Trademark Office and the United States Copyright Office to the extent required by this Agreement, the Security Documents, Requirements of Law and as reasonably requested by the Administrative Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, this Agreement, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement”, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property (provided that, (A) if a mortgage tax will be owed on the entire amount of the Secured Obligations evidenced hereby, then, to the extent permitted by, and in accordance with, applicable law, the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Secured Obligations allocated to the applicable Mortgaged Property and (y) the estimated fair market value of the Mortgaged Property at the time the Mortgage is entered into, as reasonably determined by the Borrower, which in the case of clause (y) will result in a limitation of the Secured Obligations secured by the Mortgage to such amount) and (B) the Mortgage shall not secure the Loan Document Obligations in respect of Letters of Credit or the Revolving Loan in those states that impose a mortgage tax on paydowns or re-advances applicable thereto), (ii) a policy or policies of title insurance (or marked unconditional commitment to issue such policy or policies) issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor’s rights endorsement) as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates (it being agreed that the Administrative Agent shall accept zoning reports from a nationally recognized zoning company in lieu of zoning endorsements to such title insurance policies), in an amount equal to the fair market value of such Mortgaged Property or as otherwise reasonably agreed by the parties; provided that in no event will the Borrower be required to obtain independent appraisals of such Mortgaged Properties, unless required by FIRREA, (iii) a completed “Life-of-Loan” Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and if any Mortgaged Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in special flood hazard area, a duly executed notice about special flood hazard area status and flood disaster assistance and evidence of such flood insurance as provided in Section 5.07(b), (iv) in each case if reasonably requested by the Administrative Agent, a customary legal opinion with respect to each such Mortgage, from counsel qualified to opine in each jurisdiction (a) where a Mortgaged Property is located regarding the enforceability of the



Mortgage and (b) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized or incorporated, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other customary matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (v) a (a) survey in compliance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys or such other requirements as in effect at the time and otherwise reasonably satisfactory to the Administrative Agent or (b) existing survey, Express Map or other similar documentation that is available together with a no change affidavit of such Mortgaged Property and for which survey coverage is available for the policies of title insurance referenced in clause (ii) above without the need for such new or updated surveys, and (vi) evidence of payment of title insurance premiums and expenses and all recording, mortgage, transfer and stamp taxes and fees payable in connection with recording the Mortgage, any amendments thereto and any fixture filings in appropriate county land office(s). Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until, (a) if such Mortgage relates to a property not located in a flood zone, at least five (5) Business Days in advance of such execution and delivery or (b) if such Mortgage relates to a property located in a flood zone, at least fourteen (14) days in advance of such execution and delivery, each Lender has received the documents described in clause (e)(iii) above and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Administrative Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as the Administrative Agent and the Borrower reasonably agree in writing that the cost or burden of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences (that are not de minimis) to Holdings and its Affiliates (including the imposition of withholding or other material taxes)), is excessive in relation to the benefits to be obtained by the Lenders therefrom; (b) Liens required to be granted from time to time pursuant to the term "Collateral and Guarantee Requirement" shall be subject to exceptions and limitations set forth in this Agreement and the Security Documents; (c) in no event shall (i) control agreements or other control or similar arrangements be required with respect to cash, Permitted Investments, other deposit accounts, securities and commodities accounts (including securities entitlements and related assets), letter of credit rights or other assets requiring perfection by control (but not, for avoidance of doubt, possession) or (ii) landlord lien waivers, bailee waivers, warehouseman letters, estoppels, or collateral access letters be required; (d) in no event shall any Loan Party be required to complete any filings or other action with respect to the perfection of security interests in any jurisdiction outside of the United States (or any state, commonwealth or territory thereof or the District of Columbia), or to perfect or make enforceable any security interests in any such assets (it being understood that all

security granted by a Loan Party (other than Mortgages) shall be governed by the law of the state of New York; (e) in no event shall any Loan Party be required to complete any filings or other action with respect to perfection of security interests in assets subject to certificates of title beyond the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party); (f) other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party), no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$20,000,000; (g) in no event shall any Loan Party be required to complete any filings or other action (including entering into any source code escrow arrangements or seeking registration of any Copyrights) with respect to security interests in Intellectual Property beyond the filing of Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office; (h) no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party)); (i) in no event shall environmental reports be required to be delivered to the Administrative Agent or the Lenders and (j) in no event shall the Collateral include any Excluded Assets. The Administrative Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date) and any other obligations under this definition where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement (including as set forth on [Schedule 5.14](#)) or the Security Documents.

“[Commitment](#)” means with respect to any Lender, its Revolving Commitment, Other Revolving Commitment of any Class, Term Commitment, Commitments under any Incremental Term Facility of any Class, Other Term Commitment of any Class or any combination thereof (as the context requires).

“[Commitment Fee Percentage](#)” means, for any day (i) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to [Section 5.01\(d\)](#) in respect of the first full fiscal quarter after the Effective Date, 0.50% per annum and (ii) thereafter, the applicable percentage set forth below under the caption “Commitment Fee Percentage”, as determined by reference to the Senior Secured First Lien Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to [Section 5.01\(d\)](#):

	<a href="#">Senior Secured First Lien Net Leverage Ratio</a>	<a href="#">Commitment Fee Percentage</a>
<a href="#">Category 1</a>		0.50%
Greater than 4.50 to 1.00		

<u>Senior Secured First Lien Net Leverage Ratio</u>		<u>Commitment Fee Percentage</u>
Category 2		0.375%
Less than or equal to 4.50 to 1.00 but greater than to 4.00 to 1.00		
Category 3		0.25%
Less than or equal to 4.00 to 1.00		

Any increase or decrease in the Commitment Fee Percentage resulting from a change in the Senior Secured 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 5.01(d); provided that if such Compliance Certificate is not delivered in accordance with Section 5.01(d), the Commitment Fee Percentage shall be set at the margin in the row styled “Category 1” as of the first day of the month following the end of the quarter for which the Compliance Certificate was not delivered until the date on which such Compliance Certificate is delivered (on which date, the Commitment Fee Percentage shall be set at the margin based upon the calculations disclosed by such certification). Notwithstanding the foregoing, the Commitment Fee Percentage, at the option of the Administrative Agent or the Required Revolving Lenders, commencing upon written notice to the Borrower, shall be based on the rates per annum set forth in Category 1 (i) at any time that an Event of Default under Section 7.01(a) has occurred and is continuing and shall continue to so apply to but excluding the date on which such Event of Default shall cease to be continuing (and thereafter, the Category otherwise determined in accordance with this definition shall apply) or (ii) if the Borrower fails to deliver the consolidated financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b) or any Compliance Certificate required to be delivered pursuant hereto, in each case within the time periods specified herein for such delivery, during the period commencing on and including the day of the occurrence of a Default resulting from such failure and until the delivery thereof.

In the event that the Compliance Certificate setting forth the Senior Secured First Lien Net Leverage Ratio previously delivered pursuant to Section 5.01(d) was inaccurate (and such inaccuracy is discovered while any Revolving Commitments are outstanding), and such inaccuracy, if corrected, would have led to the application of a higher Commitment Fee Percentage for any Applicable Period than the Commitment Fee Percentage applied for such Applicable Period, then, to the extent any Revolving Commitments are outstanding at such time, (i) the Borrower shall as soon as practicable deliver to the Administrative Agent the correct certified calculation of the Senior Secured First Lien Net Leverage Ratio for such Applicable Period, (ii) the Commitment Fee Percentage for such Applicable Period shall be determined as if the Category for such higher Commitment Fee Percentage was applicable for such Applicable Period, and (iii) the Borrower shall within ten (10) Business Days of written demand thereof by

the Administrative Agent pay to the Administrative Agent the accrued additional commitment fees with respect to Revolving Loans owing as a result of such increased Commitment Fee Percentage for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with this Agreement.

“Commitment Letter” means that certain Commitment Letter, dated as of May 13, 2017 (and as supplemented by that certain Joinder to Commitment Letter, dated as of June 7, 2017), between, by and among the Joint Lead Arrangers and GTCR Topco.

“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.

“Company” has the meaning specified in the preliminary statements in this Agreement.

“Company Material Adverse Effect” means “Material Adverse Effect” as defined in the Acquisition Agreement.

“Compliance Certificate” means the certificate required to be delivered pursuant to Section 5.01(d), substantially in the form of Exhibit R.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back), other than with respect to clause (xx), in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, the sum of (A) premium payments, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) permitted to be incurred hereunder plus (B) the portion of rent expense with respect to such period under Capitalized Leases that is treated as interest expense in accordance with GAAP plus (C) the implied interest component of synthetic leases with respect to such period plus (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk in respect of Indebtedness, net of interest income and gains on such hedging obligations or such derivative instruments plus (E) bank and letter of credit fees and banker’s acceptance fees and costs of surety bonds in connection with financing activities, plus (F) any commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility;

(ii) provision for taxes based on income, profits or capital and sales and gross sales taxes, including federal, foreign, state, franchise, excise, and similar taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations;

(iii) Non-Cash Charges as elected by the Borrower;

(iv) [reserved];

(v) extraordinary charges, expenses or losses in accordance with GAAP;

(vi) unusual or non-recurring charges, expenses or losses (including any unusual or non-recurring operating expenses directly attributable to the implementation of cost savings initiatives), integration costs, severance, relocation costs, office and facilities' opening costs and other business optimization expenses (including related to new product introductions and new system design and implementation costs), recruiting costs and fees, signing fees, expenses, costs and bonuses, retention or completion bonuses, contract termination costs, transaction fees and expenses, transition costs, systems establishment costs, costs related to closure/consolidation of office and facilities, costs related to the implementation of operational and reporting systems and technology initiatives, consulting fees and expenses, any one time expense relating to enhanced accounting function or other transaction costs (including those associated with becoming a standalone entity or a public company), and non-recurring Intellectual Property development, curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities) or any other costs incurred in connection with any of the foregoing;

(vii) restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to the Transaction and other acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements;

(viii) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary deducted (and not added back in such period) in calculating Consolidated Net Income;

(ix) (A) management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses permitted to be paid under this Agreement and related indemnities paid or accrued to equity holders of Holdings (and their Affiliates) and director fees and expenses and (B) the amount of expenses relating to payments made to option holders of Holdings in connection with, or as a result of, any distribution being made to shareholders of such Person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted by the Loan Documents;

(x) losses on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(xi) any non-cash loss attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such loss has not been realized);

(xii) any loss relating to amounts paid in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income for such period;

(xiii) any gain relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (d)(iv) and (d)(v) below;

(xiv) any costs or expenses incurred by Holdings, the Borrower or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of Holdings or Net Proceeds of an issuance of Equity Interests of Holdings (other than Disqualified Equity Interests), or repurchase of Equity Interests of Holdings from employees, directors or consultants;

(xv) any net pension or other post-employment benefit costs 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 715, and any other items of a similar nature;

(xvi) any other add-backs and adjustments previously identified and agreed to by the Joint Lead Arrangers, including all such add-backs and adjustments set forth in the Sponsor Model or the Information Memorandum; (xvii) the amount of losses on Dispositions of accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xviii) any increase in expenses resulting from the revaluation of inventory (including any impact of changes of inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments;

(xix) charges, losses or expenses to the extent indemnified or insured or reimbursable, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days) by a third party;

(xx) solely for purposes of determining compliance with the Financial Performance Covenant in respect of any period which includes the exercise of a Cure Right (but not for the determination of the Senior Secured First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Total Net Leverage Ratio for any other purposes), any Cure Amount (subject in all respects to the terms of Section 7.02); and

(xxi) to the extent that any Holdings Parent Specified Expenses would have been added back to Consolidated EBITDA pursuant to clauses (a)(i) through (xx) above had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses.

plus

(b) without duplication, the amount of “run rate” cost savings, operating expense reductions, other operating improvements and “run rate” synergies related to the Transaction, any Specified Transaction, any restructuring, cost saving initiative or other initiative projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken, in each case on or prior to the date that is eighteen (18) months after the end of the relevant Test Period (which shall be deemed to be the Effective Date for any actions initiated prior to the Effective Date) (which cost savings, operating expense reductions, other operating improvements and synergies shall be added to Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; provided that (A) a Financial Officer of the Borrower shall certify in a Compliance Certificate that in its good faith judgment such cost savings are reasonably identifiable, reasonably anticipated to be realized, and factually supportable and (B) no cost savings, operating expense reductions, other operating improvements or synergies shall be added pursuant to this clause (b) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions or synergies that are included in clauses (a)(vi) and (a)(vii) above or in the definition of “Pro Forma Adjustment” (it being understood and agreed that “run rate” shall mean the full recurring benefit that is associated with any action taken);

provided, further, that any amounts added back pursuant to this clause (b) (together with any anticipated “run rate” synergies added to the calculation of Consolidated EBITDA pursuant to the definition of “Pro Forma Adjustment”), shall not exceed, in the aggregate for such period, 25% of Consolidated EBITDA (as determined after giving effect to all such amounts added pursuant to this clause (b) and the definition of “Pro Forma Adjustment”); provided, further that, for the avoidance of doubt, the amount of any such (x) items resulting from, or in connection with, the Transactions and (y) items that would be permitted to be included pursuant to clause (xvi), in each case, shall not be subject to or included in the calculation of such 25% limitation.

plus

(c) to the extent covered by business interruption insurance and actually reimbursed or otherwise paid in cash, expenses or losses relating to business interruption or, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

less

(d) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) unusual or non-recurring gains;

(ii) non-cash gains (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);

(iii) gains on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(iv) any non-cash gain attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such gain has not been realized);

(v) any gain relating to amounts received in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income in such period;

(vi) the amount of any minority interest income consisting of losses attributable to minority interests or non-controlling interests in any non-wholly owned Restricted Subsidiary;



(vii) [reserved];

(viii) any loss relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (a)(xi) and (a)(xii) above;

in each case, as determined on a consolidated basis for Holdings and the Restricted Subsidiaries in accordance with GAAP; provided that:

(I) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of Financial Accounting Standards Codification No. 815—Derivatives and Hedging,

(II) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) to the extent not included in Consolidated Net Income, the Acquired EBITDA of any Person, business, line of business, division, business unit or asset acquired by Holdings, the Borrower or any Restricted Subsidiary during such period (other than any Unrestricted Subsidiary) to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business, line of business, division, business unit or assets to the extent not so acquired) (each such Person, property, business, line of business, division, business unit or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), in each case based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis and (B) an adjustment equal to the amount of the Pro Forma Adjustment for such period (including the portion thereof occurring prior to such acquisition or conversion), subject to the limitations set forth in clause (b) above;

(III) there shall be (A) to the extent included in Consolidated Net Income, excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business, line of business, division, business unit or asset (other than any Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations in accordance with GAAP (other than (x) if so classified on the basis that it is being held for sale unless such sale has actually occurred during such period and (y) for periods prior to the applicable sale, transfer or other disposition, if the Disposed EBITDA of such Person, property, business, line of business, division, business unit or asset is positive (i.e., if such Disposed EBITDA is negative, it shall be added back in determining Consolidated EBITDA for any period)) by Holdings, the Borrower or any Restricted Subsidiary during such period (each such Person, property, business, line of business, division, business unit or asset so sold, transferred or

otherwise disposed of, closed or classified, a “Sold Entity or Business”), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), in each case based on the Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis and (B) to the extent not included in Consolidated Net Income, included in determining Consolidated EBITDA for any period in which a Sold Entity or Business is disposed, an adjustment equal to the Pro Forma Disposal Adjustment with respect to such Sold Entity or Business (including the portion thereof occurring prior to such disposal); and

(IV) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA any expense (or income) as a result of adjustments recorded to contingent consideration liabilities relating to the Transaction or any Permitted Acquisition (or other Investment permitted hereunder).

For the purposes of determining the Senior Secured First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Total Net Leverage Ratio for any relevant Test Period, Consolidated EBITDA shall be deemed to equal (a) \$23,863,425 for the fiscal quarter ended June 30, 2016, (b) \$24,935,436 for the fiscal quarter ended September 30, 2016, (c) \$28,738,786 for the fiscal quarter ended December 31, 2016 and (d) \$28,043,817 for the fiscal quarter ended March 31, 2017 (it being understood that such amounts are subject to adjustments, as and to the extent otherwise contemplated in this Agreement, in connection with any Pro Forma Adjustment, Pro Forma Disposal Adjustment or any calculation on a Pro Forma Basis).

“Consolidated Net Income” means, for any period, the net income (loss) of Holdings and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication;

(a) extraordinary items for such period in accordance with GAAP;

(b) the cumulative effect of a change in accounting principles during such period;

(c) any accruals, payments, fees, costs and expenses (including rationalization, legal, tax, structuring, financial advisory, investment banking, any transaction or retention bonus or similar payment and fees, costs and expenses of any counsel, consultants or other advisors and other costs and expenses) incurred during such period, or any amortization thereof for such period, in connection with the Transactions (including Transaction Costs), any Specified Transactions, any non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investments (including any earn-outs), Restricted Payments, Dispositions, recapitalization, issuances of Indebtedness or Equity Interests (including any initial public offering) or repayment of debt, refinancing transactions or amendment or other modification of any debt instrument, and restructurings, workouts and extensions and refinancings of any of the foregoing, non-competition agreements, one-time accruals, up-front fees, financing fees,

commitment fees, costs, expenses or premiums related to any repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of or waiver or consent relating to any debt instrument (in each case, including the Transaction Costs and any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed and including costs and expenses of the Administrative Agent and Lenders that are reimbursed and fees paid to the Permitted Holders) and any charges or non-recurring merger or amalgamation costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460); provided that any such accruals, payments and expenses related to unconsummated transactions shall not, together with any accruals, payments and expenses related to unconsummated transactions added back pursuant to clause (a)(vi) of the definition of "Consolidated EBITDA", exceed \$5,000,000 in the aggregate in any four-quarter fiscal period;

(d) any income (loss) for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments;

(e) accruals and reserves that are established or adjusted as a result of the Transactions or any Permitted Acquisition or other Investment not prohibited under this Agreement in accordance with GAAP (including any adjustment of estimated payouts on earn-outs) or changes as a result of the adoption or modification of accounting policies during such period;

(f) any income (loss) attributable to deferred compensation plans or trusts;

(g) stock-based award compensation expenses;

(h) the amount of any expense required to be recorded as compensation expense related to contingent transaction consideration;

(i) currency translation gains and losses related to currency remeasurements of assets, liabilities or indebtedness (including the net loss or gain resulting from hedging agreements for currency exchange risk and revaluations of intercompany balances);

(j) to the extent that any Holdings Parent Specified Expenses would have been included in Consolidated Net Income had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses; and

(k) the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to Holdings and its Restricted Subsidiaries), as a result of the Transactions, any acquisition or Investment consummated prior to the Effective Date and any Permitted Acquisitions (or other Investment not prohibited hereunder) or the amortization or write-off of any amounts thereof.

There shall be included in Consolidated Net Income, without duplication, any dividends or other distributions received in cash or other Permitted Investments from Unrestricted Subsidiaries.

“Consolidated Senior Secured First Lien Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured First Lien Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured First Lien Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Senior Secured Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Total Net Indebtedness” means, as of any date of determination, the aggregate amount of Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Working Capital” means, at any date, the excess (which may be negative) of (a) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries at such date, excluding the current portion of deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries on such date, but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans, Second Lien Term Loans and obligations under Letters of Credit and Capital Lease Obligations to the extent otherwise included therein, (iii) the current portion of interest, (iv) the current portion of current and deferred income taxes, (v) accrual of any costs or expenses related to restructuring reserves, (vi) the current portion of pension liabilities and (vii) deferred revenue; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in working capital (A) arising from acquisitions or dispositions by Holdings and its Restricted Subsidiaries shall be measured from the date on which such acquisition or disposition occurred until the first anniversary of such acquisition or disposition with respect to the Person subject to such acquisition or disposition and (B) shall exclude (I) the impact of non-cash adjustments contemplated in the Excess Cash Flow calculation, (II) the impact of adjusting items in the definition of Consolidated Net Income and (III) any changes in current assets or current liabilities as a result of (x) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under hedging agreements or other derivative obligations or (y) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent.

“Contract Consideration” has the meaning assigned to such term in the definition of “Excess Cash Flow”.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Converted Restricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Converted Unrestricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Copyrights” has the meaning assigned to such term in the Collateral Agreement.

“Credit Agreement Refinancing Indebtedness” means Indebtedness issued, incurred or otherwise obtained by the Borrower or another Loan Party (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Term Loans, Revolving Loans (or unused Revolving Commitments), (“Refinanced Debt”); provided that such exchanging, extending, renewing, replacing or refinancing Indebtedness (a) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (plus any premium, original issue

discount and upfront fees, accrued interest and fees and expenses incurred in connection with such exchange, extension, renewal, repayment, replacement or refinancing and the incurrence of such new Credit Agreement Refinancing Indebtedness) plus additional amounts to the extent otherwise permitted to be incurred under this Agreement pursuant to Section 6.01 (which additional amounts, for the avoidance of doubt, (x) do not constitute Credit Agreement Refinancing Indebtedness and (y) shall constitute a utilization of the relevant basket or exception pursuant to which such additional amount is permitted to be incurred), (b) (i) (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) does not mature earlier than or, except in the case of Revolving Commitments, have a Weighted Average Life to Maturity shorter than the Refinanced Debt and (ii) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Secured Obligations, does not have scheduled amortization or required payments of principal prior to the maturity date of the Refinanced Debt (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) (except for customary payments in respect of asset sales, insurance and condemnation proceeds events, change of control or similar events and “AHYDO catch-up payments” and offers to purchase upon an event of default), (c) shall not be guaranteed by any entity that is not, or that does not substantially concurrently become, a Loan Party, (d) in the case of any secured Indebtedness, is (i) not secured by any assets not securing the Secured Obligations and (ii) subject to the relevant Intercreditor Agreement(s), (e) if the Refinanced Debt was (1) contractually subordinated to the Loan Document Obligations in right of payment, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt or otherwise reasonably satisfactory to the Administrative Agent and (2) contractually subordinated to the Loan Document Obligations in right of security, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the indebtedness refinanced or otherwise reasonably satisfactory to the Administrative Agent or be unsecured, (f) solely in the case such Credit Agreement Refinancing Indebtedness is *pari passu* in right of payment and security with the Initial Term Loans, such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis (or on less than a pro rata basis if the Borrower and the Lenders thereunder elect lesser payments) (but not greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, (g) in the case of any Credit Agreement Refinancing Indebtedness that is a revolving credit facility, may provide for the ability to participate (x) with respect to borrowings and repayments on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) with other then-outstanding Classes of Revolving Commitments and (y) with respect to permanent repayments and terminations of revolving commitments, on a pro rata basis or less than a pro rata basis and (h) has covenants and events of default (excluding, for the avoidance of doubt, pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) that are not materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness than

the covenants and events of default of this Agreement (when taken as a whole) are to the Lenders (unless (x) such covenants or other provisions are applicable only to periods after the maturity date of the Refinanced Debt at the time of such refinancing, (y) the Revolving Lenders or the Lenders under the Initial Term Loans, as applicable, also receive the benefit of such more favorable covenants and events of default (including, without limitation, any financial maintenance covenant, and together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial maintenance covenant) (it being understood that, to the extent that any covenant, event of default or guarantee is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Indebtedness or (ii) only applicable after the Latest Maturity Date at the time of such refinancing (provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the requirement of this clause (y) unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination) or (z) such terms and conditions are reasonably satisfactory to the Administrative Agent). For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes “Credit Agreement Refinancing Indebtedness” and (y) such Credit Agreement Refinancing Indebtedness shall not be subject to any “most favored nation” pricing provisions.

“Cure Amount” has the meaning assigned to such term in Section 7.02(a).

“Cure Right” has the meaning assigned to such term in Section 7.02(a).

“Cure Termination Date” has the meaning assigned to such term in Section 7.02(a).

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, examinership or similar debtor relief laws of the United States, or other applicable jurisdictions (domestic or foreign) from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event or condition that constitutes an Event of Default or that, upon notice, lapse of time or both hereunder would, unless cured or waived, become an Event of Default.

“**Defaulting Lender**” means, subject to Section 2.22(b), any Lender that (a) has failed to perform any of its funding obligations hereunder (or otherwise failed to pay over to the Administrative Agent any amounts owed by such Lender hereunder), including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within two (2) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower, the Administrative Agent, the Swing Line Lender, any Issuing Bank or any Lender that it does not intend to comply with its funding obligations or has made a public statement or provided any written notification to any Person to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after request by the Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Administrative Agent shall comply with any such reasonable request)) or any Issuing Bank, to confirm in a manner satisfactory to the Administrative Agent, such Issuing Bank and the Borrower that it will comply with its funding obligations (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become or is insolvent (or has admitted in writing that it is insolvent), (ii) become the subject of a proceeding under any Debtor Relief Law, (iii) had a receiver, conservator, trustee, administrator, examiner, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a substantial part of its assets or a custodian appointed for it or a substantial part of its assets, (iv) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (v) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority, where such ownership interest or proceeding does not result in or provide such Lender or Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender or Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Lender or Person.

“**Defaulting Lender Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Bank, such Defaulting Lender’s Applicable Percentage of the Loan Document Obligations with respect to the Letters of Credit issued by such Issuing Bank other than Loan Document 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, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of the Loan Document Obligations with respect to the Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 6.05(k) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

"Discount Prepayment Accepting Lender" has the meaning assigned to such term in Section 2.11(a)(iii)(B)(2).

"Discount Range" has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

"Discount Range Prepayment Amount" has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

"Discount Range Prepayment Notice" means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.11(a)(iii)(C) substantially in the form of Exhibit I.

"Discount Range Prepayment Offer" means the irrevocable written offer by a Term Lender, substantially in the form of Exhibit J, 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 2.11(a)(iii)(C)(1).

"Discount Range Proration" has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

"Discounted Prepayment Determination Date" has the meaning assigned to such term in Section 2.11(a)(iii)(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 Offers, five (5) Business Days following the receipt by each relevant Term Lender of notice from the Auction Agent in accordance with Section 2.11(a)(iii)(B), Section 2.11(a)(iii)(C) or Section 2.11(a)(iii)(D), as applicable 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 2.11(a)(iii)(A).

“Dispose” and “Disposition” each have the meaning assigned to such term in Section 6.05.

“Disposed EBITDA” means, with respect to any Sold Entity or Business or Converted Unrestricted Subsidiary for any period through (but not after) the date of such disposition or conversion, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to Holdings and its Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries or to such Converted Unrestricted Subsidiary and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests);

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof; or

(d) provides for the contractually scheduled payments of dividends in cash;

in each case, on or prior to the date ninety-one (91) days after the Latest Maturity Date; provided, however, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change in control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after the Termination Date and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof) or any of its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be

required to be repurchased by Holdings (or any direct or indirect parent company thereof) or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person or as a result of such employee's termination, death or disability.

"Disqualified Lenders" means those Persons (the list of all such Persons, the "Disqualified Lenders List") that (i) were identified in writing by the Sponsor to the Joint Lead Arrangers as being "Disqualified Lenders" on or prior to June 20, 2017, (ii) are competitors of the Borrower and its Subsidiaries that are identified in writing by the Borrower or the Sponsor to the Administrative Agent from time to time, (iii) are (a) in the case of clause (i), any Affiliates of such Persons that either (x) were identified in writing by the Borrower to the Administrative Agent on or prior to June 20, 2017 or (y) are readily identifiable as an Affiliate of such Person on the basis of such Affiliate's name and (b) in the case of clause (ii), any Affiliates (other than bona fide debt funds, investment vehicles or fixed income investors that are engaged in making or purchasing commercial loans, bonds or similar extensions of credit in the ordinary course of business) of such Persons that are either (x) identified in writing by the Borrower from time to time or (y) readily identifiable on the basis of such Affiliate's name or (iv) Excluded Affiliates; provided that, to the extent Persons are identified as Disqualified Lenders in writing by the Borrower or the Sponsor to the Administrative Agent after the Effective Date pursuant to clauses (ii) or (iii)(b), the inclusion of such persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Upon inquiry by (i) any Lender to the Administrative Agent as to whether a specified potential assignee or prospective participant is a Disqualified Lender or (ii) any potential assignee as to whether such potential assignee is a Disqualified Lender, the Administrative Agent shall be permitted to disclose to such Lender and such specific potential assignee (x) whether such specific potential assignee or prospective participant is a Disqualified Lender or (y) the identity of any other Disqualified Lender which the Administrative Agent reasonably believes may be an Affiliate of such specified potential assignee or prospective participant.

"Disqualified Lenders List" has the meaning as set forth in the definition of Disqualified Lenders.

"Dollars" or "\$" refers to lawful money of the United States of America.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Exchange Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such currency.

"Domestic Subsidiary" means any Subsidiary of Holdings organized or incorporated in the United States (or any state thereof or the District of Columbia).

"ECF Percentage" means, with respect to the prepayment required by Section 2.11(d) with respect to any fiscal year of Holdings, if the Senior Secured First Lien Net Leverage Ratio (after giving effect to any voluntary prepayments made pursuant to Section 2.11(a) after the end of such fiscal year and prior to the date of such prepayment) as of the end of such fiscal

year is (a) greater than 4.50 to 1.00, 50% of Excess Cash Flow for such fiscal year, (b) greater than 4.00 to 1.00 but less than or equal to 4.50 to 1.00, 25% of Excess Cash Flow for such fiscal year and (c) less than or equal to 4.00 to 1.00, 0% of Excess Cash Flow for such fiscal year.

“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 delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means June 30, 2017.

“Effective Date Loan Parties” means (i) Holdings, (ii) the Borrower and (iii) each other Subsidiary of Holdings that is a Loan Party as of the Effective Date (if any) and specified on Schedule 1.01(b).

“Effective Yield” means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Administrative Agent and the Borrower and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors (the effect of which floors shall be determined in a manner set forth in the proviso below) or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (a) the remaining Weighted Average Life to Maturity of such Indebtedness and (b) the four years following the date of incurrence thereof) payable by the Borrower generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, syndication, commitment, prepayment, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with all relevant syndicate Lenders and, if applicable, consent fees for an amendment paid generally to consenting Lenders; provided that with respect to any Indebtedness that includes a “LIBOR floor” or “Base Rate floor”, (i) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the interest rate margin for such Indebtedness for the purpose of calculating the Effective Yield and (ii) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the Effective Yield.

“Electing Guarantor” means any Excluded Subsidiary that, at the option and in the sole discretion of the Borrower, has been designated a Subsidiary Loan Party; *provided*, for the avoidance of doubt, (x) unless otherwise expressly agreed by the Borrower, no Subsidiary

that is an Excluded Subsidiary shall be a Loan Guarantor until and unless it ceases to be an Excluded Subsidiary, and (y) the Borrower may cause any Restricted Subsidiary that is not a Loan Guarantor to guarantee the Secured Obligations by causing such Restricted Subsidiary to become a Loan Guarantor under a Guarantee and a grantor under the applicable Security Documents in accordance with Section 5.13, and any such Restricted Subsidiary shall be a Loan Guarantor hereunder and under the other Loan Documents for all purposes; provided, that no Foreign Subsidiary shall become a Loan Guarantor unless (i) reasonably approved by the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) based upon (1) the amount and enforceability of the Guarantee that may be entered into by such Foreign Subsidiary based on such Foreign Subsidiaries jurisdiction of organization and (2) the Liens on the Collateral (and enforceability thereof) that may be granted with respect to assets (or various classes of assets) located in the jurisdiction of organization of such Foreign Subsidiary; and (ii) such security documents and other actions (including, without limitation, security documentation, delivery of legal opinions and other actions under the law of the jurisdiction of organization of the Electing Guarantor) reasonably requested by the Administrative Agent within such time periods as the Administrative Agent may agree in its reasonable discretion) shall have been delivered and/or taken to create and perfect the liens on the Collateral of such Foreign Subsidiary in its jurisdiction of incorporation.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than Holdings, the Borrower or any of their respective Affiliates), other than, in each case, (i) a natural person, (ii) a Defaulting Lender or (iii) a Disqualified Lender.

“Environmental Laws” means all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, common law, decrees and other applicable Requirements of Law and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to (1) pollution, (2) the protection of the environment, (3) preservation or reclamation of natural resources, (4) the use, handling, transportation, treatment, storage, presence, Release or threatened Release of, or exposure to, any Hazardous Material, or (5) to the extent relating to exposure to Hazardous Materials, to health or safety matters.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities) directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the presence, generation, use, handling, transportation, storage, or treatment 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 agreement to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person (whether evidenced by share certificates (or similar) or not).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA) with respect to the termination of any Plan or by application of Section 4069 of ERISA with respect to any terminated plan; (f) the receipt by a Loan Party or an ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or an intention to terminate or to appoint a trustee to administer any plan or plans in respect of which such Loan Party or ERISA Affiliate would be deemed to be an employer under Section 4069 of ERISA; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (h) the receipt by a Loan Party of any notice from any Multiemployer Plan, concerning the imposition of Withdrawal Liability, or the failure of a Loan Party or any ERISA Affiliate to pay when due, after the expiration of any applicable grace period, any installment payment with respect to any Withdrawal Liability; or (i) the withdrawal of a Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity 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.

“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.

“Eurodollar” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

- (i) Consolidated Net Income for such period,
- (ii) an amount equal to the amount of all Non-Cash Charges to the extent deducted in arriving at such Consolidated Net Income,
- (iii) decreases in Consolidated Working Capital, and
- (iv) an amount equal to the aggregate net non-cash loss on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; less

(b) the sum, without duplication, of:

- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (including any amounts included in Consolidated Net Income of proceeds received or due from business interruption insurance or reimbursement of expenses and charges pursuant to indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Agreement to the extent such amounts are due but not received during such period) and cash charges, expenditures and losses added to (or excluded from the determination of) Consolidated Net Income pursuant to clauses (a) through (i) of the definition of “Consolidated Net Income” (other than cash charges in respect of Transaction Costs paid on or about the Effective Date to the extent financed with the proceeds of long-term Indebtedness incurred on the Effective Date),
- (ii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of capital expenditures and Intellectual Property development expenditures made in cash or accrued during such period, except to the extent that such expenditures were financed with the proceeds of long-term Indebtedness of Holdings and its Restricted Subsidiaries,
- (iii) the aggregate amount of all principal payments of Indebtedness (including (1) Second Lien Term Loans, (2) the principal component of payments in respect of Capitalized Leases, (3) scheduled repayments of Initial Term Loans pursuant to Section 2.10(a), (4) scheduled repayments of other Senior Secured

First Lien Indebtedness and (5) the amount of any mandatory prepayment of Loans to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding all other prepayments of Term Loans or other Senior Secured First Lien Indebtedness and all prepayments of revolving loans (including Revolving Loans (except to the extent the prepayment thereof reduces the Borrower's prepayment obligation pursuant to clause (i) of the proviso to the first sentence of Section 2.11(d))) made during such period, other than (A) in respect of any revolving credit facility except to the extent there is an equivalent permanent reduction in commitments thereunder and (B) to the extent financed with the proceeds of other long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(iv) an amount equal to the aggregate net non-cash gain on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period,

(vi) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of long-term liabilities of Holdings and its Restricted Subsidiaries other than Indebtedness to the extent that such payments were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries.

(vii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of Investments (other than Investments in Permitted Investments) and acquisitions made in accordance with Section 6.04 (other than Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (j), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)) to the extent that such Investments and acquisitions were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(viii) the amount of dividends and other Restricted Payments (including the amount of Tax Distributions made by the Borrower during such period or payable after such period in respect of income generated during such period) pursuant to Section 6.07(a) (other than pursuant to Section 6.07(a)(i), (a)(ii), (a)(~~vi~~viii), (a)(xiii), (a)(xv) or (a)(xvii)), in each case to the extent not deducted in arriving at Consolidated Net Income) and paid in cash during such period or payable in respect of such period, to the extent such dividends and Restricted Payments were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries; provided that any amount deducted for such period in respect of amounts payable during a subsequent period shall not be deducted in any subsequent period and, to the extent not actually paid during such subsequent period, shall be added to Excess Cash Flow for such subsequent period,



(ix) the aggregate amount of payments and expenditures actually made by Holdings and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees and restructuring charges) to the extent that such payments and expenditures are not expensed during such period,

(x) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of Non-Cash Charges included in the calculation of Consolidated Net Income in any prior period,

(xi) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness, in each case to the extent not deducted in determining Consolidated Net Income,

(xii) at the option of the Borrower, and without duplication of amounts deducted from Excess Cash Flow in prior periods, (1) the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts, commitments, letters of intent or purchase orders (the "Contract Consideration"), in each case, entered into prior to or during such period, or at the option of the Borrower, after the applicable period and prior to the applicable Excess Cash Flow due date, and (2) to the extent set forth in a certificate of a Financial Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Test Period is required to be delivered pursuant to Section 5.01(d) (which shall be satisfied if such certification is included in the Compliance Certificate), the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash expenditures by the Borrower or any of the Restricted Subsidiaries (the "Planned Expenditures"), in the case of each of clauses (1) and (2), relating to Permitted Acquisitions, other Investments (other than Investments in Permitted Investments pursuant to Section 6.04(a) and Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)), restructuring charges, or capital expenditures (including Capitalized Software Expenditures or other purchases or development of Intellectual Property) to be consummated or made during a subsequent Test Period (and in the case of Planned Expenditures, the immediately succeeding fiscal year); provided that, to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions, Investments, restructuring charges or capital expenditures during such Test Period 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 Test Period, and

(xiii) the amount of taxes (including penalties and interest) paid in cash and/or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

(xiv) the aggregate amount of Transaction Costs incurred during such period to the extent not deducted in the calculation of Consolidated Net Income and were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries.

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

“Exchange Rate” has the meaning assigned to such term in Section 1.07.

“Excluded Affiliates” means any Affiliate of any Joint Lead Arranger or Lender that are engaged as principals primarily in private equity or venture capital transactions and any employees of any Joint Lead Arranger, Lender or any of their respective Affiliates engaged directly or indirectly in the sale of the Company as representatives of the Company other than such Joint Lead Arranger’s internal legal compliance, risk management, credit or investment committee members.

“Excluded Assets” means (a) any fee-owned real property that is not Material Real Property and all leasehold (including ground lease) interests in real property (including requirements to deliver landlord lien waivers, estoppels and collateral access letters), (b) motor vehicles and other assets subject to certificates of title or ownership (to the extent a security interest therein cannot be perfected by the filing of a UCC-1 financing statement), (c) letter of credit rights (except to the extent constituting supporting obligations (as defined under the UCC) in which a security interest can be perfected with the filing of a UCC-1 financing statement) with a value of less than \$2,500,000, (d) commercial tort claims with a value (as reasonably estimated by the Borrower) of less than \$2,500,000, (e) Excluded Equity Interests, (f) any lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (or any asset subject to such agreement or arrangement) with any Person if, to the extent and for so long as, the grant of a Lien thereon to secure the Secured Obligations (in each case, in existence on the Effective Date or upon the acquisition of the relevant Subsidiary party thereto or asset (so long as not entered into in contemplation thereof)) would require the consent of a third party (unless such consent has been received) (it being understood that no Loan Party shall be under any affirmative obligation to obtain such consent) or violate or invalidate, constitute a breach of or a default under, or create a right of termination in favor of any party (other than any Loan Party) to, such lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law), (g) any asset subject to a Lien of the type permitted by Section 6.02(iv) (whether or not incurred pursuant to such Section) or a Lien permitted by Section 6.02(xi), in the case of Liens permitted by Section 6.02(xi) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations constitutes a breach of or a default under, or creates a right of termination in favor of any party (other than any Loan Party) to, any agreement pursuant to which such Lien has been created (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) (provided that any such provision is not included by the Borrower or any Restricted Subsidiary principally for the purpose of taking advantage of the exclusion in this

clause (g)), (h) (1) any intent-to-use Trademark applications filed in the United States Patent and Trademark Office, prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, but only to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application or any registration that may issue therefrom under applicable federal law and (2) any Intellectual Property registered, issued or applied for in, or arising under the laws of, any jurisdiction outside of the United States, (i) any asset (including Equity Interests) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law, rule or regulation, contractual obligation existing on the Effective Date (or, if later, the date the Person owning the asset becomes a Restricted Subsidiary, so long as the applicable contractual obligation was not entered into in contemplation of such Person becoming a Restricted Subsidiary) or agreements with any Governmental Authority (other than to the extent that any such prohibition would be rendered ineffective pursuant to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) or which would require consent, approval, license or authorization from any Governmental Authority or regulatory authority (it being understood that there shall be no requirement to obtain the consent of any governmental authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute), unless such consent, approval, license or authorization has been received, (j) margin stock (within the meaning of Regulation U of the Board of Governors, as in effect from time to time), (k) Securitization Assets, (l) [reserved], (m) other than with respect to (i) the pledge of Equity Interests of a Loan Party and (ii) the pledge of assets by an Electing Guarantor which is a Foreign Subsidiary, any assets located or titled outside the United States, (n) assets acquired in connection with a Permitted Acquisition or other permitted Investment subject to liens permitted under this Agreement and which are (and for so long as) subject to contractual arrangements (not incurred in contemplation thereof) prohibiting a Lien securing the Secured Obligations (but only so long as such Lien is in existence), (o) any assets to the extent that the granting of a Lien thereon to secure the Secured Obligations could reasonably be expected to result in adverse (other than de minimis) tax or regulatory consequences, as reasonably determined by the Borrower; and (p) any assets with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed to in writing), the cost or burden of pledging such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom).

“Excluded Equity Interests” means Equity Interests in any (a) Unrestricted Subsidiary, (b) Immaterial Subsidiary (to the extent not a Guarantor), (c) Subsidiary that is a CFC, any Subsidiary that is a direct or indirect Subsidiary of a CFC and any Subsidiary that is a FSHCO (except that up to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of any Subsidiary that is a CFC, a direct or indirect Subsidiary of a CFC or a FSHCO shall not be Excluded Equity Interests), (d) joint ventures and Non-Wholly Owned Subsidiaries which cannot be pledged without the consent of third parties (it being understood that there shall be no obligation to obtain such consent) (after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law) or (e) not-for-profit Subsidiary, captive insurance company or special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary.

“Excluded Information” has the meaning assigned to such term in Section 2.11(a)(iii)(A).

“Excluded Subsidiary” means (a) any Subsidiary that is not a direct or indirect Wholly Owned Subsidiary of Holdings, (b) each Subsidiary listed on Schedule 1.01(a), (c) any Subsidiary that is prohibited by applicable law, rule or regulation or contractual obligation existing on the Effective Date or, if later, the date such Subsidiary first becomes a Restricted Subsidiary (but, in the case of a contractual obligation, to the extent not created in contemplation of such Subsidiary becoming a Restricted Subsidiary), from guaranteeing the Secured Obligations or which would require (and, only for so long as) any governmental or regulatory consent, or third party consent, approval, license or authorization to do so, unless such consent, approval, license or authorization has been obtained, provided that such Subsidiary shall have no affirmative obligation to obtain such consent, (d) any Immaterial Subsidiary, (e) any Subsidiary to the extent the provision of a Guarantee by such Subsidiary could reasonably be expected to result in adverse (other than de minimis) tax consequences as reasonably determined by the Borrower, (f) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed in writing), the cost or burden of providing the Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (g) any Subsidiary that is (or, if it were a Loan Party, would be) an “investment company” under the Investment Company Act of 1940, as amended, (h) any not-for profit Subsidiaries, captive insurance companies or other special purpose subsidiaries, (i) any Foreign Subsidiary other than a Foreign Subsidiary that becomes a Subsidiary Loan Party pursuant to Section 5.13, (j) any direct or indirect Subsidiary of a CFC, (k) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary, (l) any Subsidiary that is a FSHCO, (m) each Unrestricted Subsidiary, (n) any Subsidiary for which the providing of a Guarantee could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties of such Subsidiary’s officers, directors, (or other governing body) or managers and (o) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition (or other Investment not prohibited by this Agreement) financed with Indebtedness permitted under Section 6.01 hereof as assumed Indebtedness and any Restricted Subsidiary thereof that Guarantees such Indebtedness, in each case to the extent such Indebtedness prohibits such Subsidiary from becoming a Loan Guarantor; provided that any Immaterial Subsidiary that is a signatory to any Collateral Agreement or the Guarantee Agreement shall be deemed not to be an Excluded Subsidiary for purposes of this Agreement and the other Loan Documents unless released in accordance herewith.

“Excluded Swap Obligation” means, with respect to any Loan Guarantor at any time, any Secured Swap Obligation under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act, if, and to the extent that, all or a portion of the guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Secured Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant”, as defined in the Commodity Exchange Act (determined after giving effect to any “Keepwell”, support or other agreement for the benefit of

such Loan Guarantor, at the time such guarantee or grant of a security interest becomes effective with respect to such related Secured Swap Obligation). If a Secured Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Secured Swap Obligation that is attributable to swaps that are or would be rendered illegal due to such guarantee or security interest.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) such recipient’s net income (however denominated) and franchise Taxes, in each case (i) imposed on it by a jurisdiction as a result of such recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, or (ii) that are Other Connection Taxes, (b) any branch profits tax imposed under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (a)(i) above, (c) any Tax imposed pursuant to FATCA, (d) any Tax that is attributable to a Lender’s failure to comply with Section 2.17(f) and (e) any U.S. federal withholding Taxes imposed on amounts payable to a Lender pursuant to a Requirement of Law in effect at the time such Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.19 hereto) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive payment of additional amounts with respect to such withholding Taxes under Section 2.17(a).

“Existing Credit Agreements” means that certain First Lien Credit Agreement, dated as of October 12, 2016 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time), among Vivid Seats LLC, a Delaware limited liability company, Hoya Midco, LLC, a Delaware limited liability company, as a Guarantor (as defined therein), each of the other Guarantors (as defined therein), the Lenders (as defined therein) and other agents from time to time party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, as collateral agent, as Issuing Bank (as defined therein) and as the Swing Line Lender (as defined therein) and (y) that certain Second Lien Credit Agreement, dated as of October 12, 2016 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time), among Vivid Seats LLC, a Delaware limited liability company, Hoya Midco, LLC, a Delaware limited liability company, as a Guarantor (as defined therein), each of the other Guarantors (as defined therein) party thereto, the Lenders (as defined therein) from time to time party thereto, and JPMorgan Chase Bank, N.A., as administrative agent for the Lenders (as defined therein) and as collateral agent for the Secured Parties (as defined therein).

“Existing Letters of Credit” means each letter of credit that is outstanding on the Effective Date and set forth on Schedule 1.02.

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable thereto and not materially more onerous to comply with), any current or future Treasury regulations thereunder or other official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code as of the date of this Agreement (or any

amended or successor version described above) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“FCPA” has the meaning specified in Section 3.16(a).

“Federal Funds Effective Rate” means, for any day, the per annum rate equal to the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time), as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided that the Federal Funds Effective Rate, if negative, shall be deemed to be 0.00%.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, corporate controller or other officer with similar functions and responsibilities as the foregoing of Holdings or the Borrower, as applicable.

“Financial Performance Covenant” means the covenant set forth in Section 6.11.

“Financing Transactions” means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, (b) the borrowing of Loans hereunder and the use of the proceeds thereof, (c) the execution, delivery and performance by each Loan Party of the Second Lien Loan Documents to which it is to be a party, (d) the borrowing of the Second Lien Term Loans and the use of proceeds thereof and (e) the issuance, amendment or extension of Letters of Credit hereunder and the use of proceeds thereof.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means a Lender that is not a United States Person (as defined in Section 7701(a)(30) of the Code).

“Foreign Subsidiary” means any Restricted Subsidiary of Holdings other than a Domestic Subsidiary.

“Fronting Exposure Cap” means, with respect to each Issuing Bank, the product of (i) the Letter of Credit Sublimit multiplied by (ii) the Applicable Percentage of such Issuing Bank (or its affiliated Revolving Lender). The initial amount of each Issuing Bank’s Fronting Exposure Cap is set forth on Schedule 2.01.

“FSHCO” means any Subsidiary of Holdings substantially all of the assets of which are capital stock of one or more CFCs and, if applicable, debt of any such CFC.

“Funded Debt” means all Indebtedness of Holdings and its 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, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of any subsidiary at “fair value”, as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of Capital Lease Obligations.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether federal, state, provincial, territorial, 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 in any jurisdiction (including any supra national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such

Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or product warranty obligations. 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 in good faith by a Financial Officer. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantee Agreement" means the First Lien Guarantee Agreement among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit B.

"Hazardous Materials" means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, or contaminants of any nature and in any form regulated pursuant to any Environmental Law.

"Historical Audited Financial Statements" means the audited consolidated balance sheet and the related consolidated statements of income and retained earnings and statement of cash flows of the Company and its subsidiaries for the fiscal years ending December 31, 2015 and December 31, 2016.

"Holdings" has the meaning given to such term in the introductory paragraph hereto; provided that upon and after an IPO, if the IPO Entity is Holdings or any Person of which Holdings is a wholly-owned Subsidiary, "Holdings" shall mean the IPO Entity.

"Holdings Parent" means any direct or indirect parent company of Holdings.

"Holdings Parent Specified Expenses" shall mean any charge, tax or expense incurred or accrued by any Holdings Parent during any period to the extent that Holdings has made a Restricted Payment (or has made any Investment in lieu thereof pursuant to Section 6.04(l)) to any Holdings Parent in respect thereof pursuant to Section 6.07(a)(vii), but in each case limited to the amount of such Restricted Payment or Investment.

"Identified Participating Lenders" has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

"Identified Qualifying Lenders" has the meaning specified in Section 2.11(a)(iii)(D)(3).



“Immaterial Subsidiary” means any Subsidiary other than a Material Subsidiary.

“Impacted Loans” has the meaning specified in Section 2.14(b).

“Incremental Cap” means, as of any date of determination, the sum of (I)(a) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) amounts incurred prior to the date of determination in respect of all Incremental Facilities and Incremental Equivalent Debt, in each case, incurred in reliance on this clause (a) and any Indebtedness incurred under the Incremental Facilities and Incremental Equivalent Debt (each as defined in the Second Lien Credit Agreement) in reliance on clause (I)(a) of the Incremental Cap (as defined in the Second Lien Credit Agreement) (or any equivalent successor provision), (y) all amounts incurred pursuant to clause (A)(I)(x) of Section 6.01(a)(~~xv~~) and clause (A)(I)(x) of Section 6.01(a)(~~xvi~~) and (z) any Indebtedness incurred under clause (A)(I)(x) of Section 6.01(a)(~~xv~~) or clause (A)(I)(x) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision); provided that the maximum amount deducted pursuant to this parenthetical shall not exceed the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended), plus (b)(i) the aggregate principal amount of all Term Loans voluntarily prepaid pursuant to Section 2.11(a)(i), (ii) the aggregate amount of all Term Loans repurchased and prepaid pursuant to Section 2.11(a)(iii) or otherwise in a manner not prohibited by Section 9.04(g), (iii) all reductions of Revolving Commitments pursuant to Section 2.08(b) and (iv) the aggregate principal amount of all Incremental Facilities and Incremental Equivalent Debt voluntarily prepaid or repurchased, in each case prior to such date (other than, in each case, prepayments, repurchases and commitment reductions (A) made with the proceeds of the incurrence of Credit Agreement Refinancing Indebtedness or other long-term Indebtedness or (B) of Incremental Facilities or Incremental Equivalent Debt that had been incurred in reliance on the following clause (II), Section 6.01(a)(vii), clause (II) of Section 6.01(a)(xv) or clause (II) of Section 6.01(a)(xvi)) (the sum of the amounts set forth in this clause (b), the “Voluntary Prepayment Amount”) (*minus* the sum of (1) the aggregate principal amount of all Incremental Facilities and all Incremental Equivalent Debt incurred in reliance on this clause (b) plus (2) the aggregate principal amount of Indebtedness incurred pursuant to clause (A)(I)(y) of Section 6.01(a)(~~xv~~) and clause (A)(I)(y) of Section 6.01(a)(~~xvi~~) plus (3) the aggregate principal amount of Indebtedness incurred pursuant to the Voluntary Prepayment Amount under and as defined in the Second Lien Credit Agreement) (or any equivalent successor provision) plus (II) the maximum aggregate principal amount that can be incurred without causing the Senior Secured First Lien Net Leverage Ratio, after giving effect to the incurrence of any such Incremental Facility or Incremental Equivalent Debt that is secured on a pari passu basis with the Initial Term Loans (which, except as otherwise provided below, shall assume that the full amount of any Incremental Facility or Incremental Equivalent Debt being established at such time is fully drawn and without deducting in calculating the numerator of such Senior Secured First Lien Net Leverage Ratio any cash proceeds thereof, provided that to the extent the proceeds of any such Incremental Facility, Incremental Equivalent Debt or any Indebtedness incurred in reliance on Section 6.01(a)(~~xx~~)(i)(y) are to be used to repay Indebtedness it shall not limit the Borrower’s ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, on a Pro Forma Basis (but without giving effect to any simultaneous incurrence

of any Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y), made pursuant to the foregoing clause (I)(a)), to exceed 5.00 to 1.00 for the most recent Test Period ended; provided that, in the case of an Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) that is secured by the Collateral on a junior lien basis to the Initial Term Loans, in lieu of complying with the Senior Secured First Lien Net Leverage Ratio set forth above in this clause (II), the Senior Secured Net Leverage Ratio, after giving effect to the incurrence of such junior lien Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) (which compliance with such Senior Secured Net Leverage Ratio, subject to the immediately following proviso, shall be determined giving effect to any undrawn amount of any Incremental Facility or Incremental Equivalent Debt established at such time as if such Incremental Facility or Incremental Equivalent Debt is fully drawn and without deducting in calculating the numerator of such Senior Secured Net Leverage Ratio any cash proceeds thereof, provided, however, that any use thereof to repay Indebtedness shall be given pro forma effect as contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, shall not exceed 6.75 to 1.00 on a Pro Forma Basis for the most recent Test Period ended; provided, further, that if such Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) is unsecured, in lieu of complying with the Senior Secured First Lien Net Leverage Ratio or Senior Secured Net Leverage Ratio set forth above in this clause (II), the Total Net Leverage Ratio, after giving effect to the incurrence of such Incremental Facility, Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) (which compliance with such Total Net Leverage Ratio, subject to the immediately following proviso, shall be determined giving effect to any undrawn amount of any Incremental Facility established at such time as if such Incremental Facility is fully drawn and without deducting in calculating the numerator of such Senior Secured Net Leverage Ratio any cash proceeds thereof, provided, however, that any use thereof to repay Indebtedness shall be given pro forma effect as contemplated by the definition of “Pro Forma Basis”) and the use of proceeds thereof, shall not exceed 6.75 to 1.00 on a Pro Forma Basis for the most recent Test Period ended. Any ratio calculated for purposes of determining the “Incremental Cap” shall be calculated on a Pro Forma Basis for the most recent Test Period ended and subject to Section 1.06 to the extent applicable and, at the option of the Borrower, any unfunded Incremental Facility or Incremental Equivalent Debt or Indebtedness incurred in reliance on Section 6.01(a)(xx)(i)(y) may be tested at the time of the initial funding in lieu of the time of establishment. Loans may be incurred under both clauses (I) and (II), and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (II) above and then calculating the incurrence under clause (I)(b) above and then calculating the incurrence under clause (I)(a) above) (if any) and, for the avoidance of doubt, the Senior Secured First Lien Net Leverage Ratio, Senior Secured Net Leverage Ratio or Total Net Leverage Ratio, as applicable shall be permitted to exceed the maximum ratio set forth in clause (II) above to the extent of such amounts incurred in reliance on clause (I) at substantially the same time. Unless the Borrower otherwise elects in writing to the Administrative Agent, the Borrower shall be deemed to have used amounts, if any, that are available under clause (II) above prior to the utilization of amounts under clause (I) above.

“Incremental Equivalent Debt” has the meaning assigned to such term in Section 6.01(a)(xxiii).

“Incremental Facility” has the meaning assigned to such term in Section 2.20(a).

“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.20(d).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.20(d).

“Incremental Loan” has the meaning assigned to such term in Section 2.20(a).

“Incremental Revolving Commitment Increase” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Facility” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Increase” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Loan” means any Term Loan provided under any Incremental Term Facility.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) trade accounts payable in the ordinary course of business, (y) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after being due and payable and (z) expenses accrued in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; provided that the term “Indebtedness” shall not include (i) deferred or prepaid revenue, deferred tax liabilities, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA and other accrued obligations (including transfer pricing), and customary obligations under employment agreements and deferred compensation, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty, indemnity or other unperformed obligations of the seller, or other contingent post-closing purchase price adjustments, non-compete or consulting obligations, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Person that is a Holdings Parent appearing on the balance sheet of Holdings or the Borrower, or solely by reason of push down accounting under GAAP, or (v) for the avoidance of doubt, any

Qualified Equity Interests issued by Holdings or the Borrower. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business. The amount of any Indebtedness issued at a discount to the initial principal amount thereof shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

"Indemnified Taxes" means (a) 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 and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Information" has the meaning assigned to such term in Section 9.12(a).

"Information Memorandum" means the Confidential Information Memorandum dated June 13, 2017, relating to Holdings and the Transactions.

"Initial Term Loans" means the Loans made pursuant to Section 2.01(a) and on and after the Amendment No. 2 Effective Date shall include the 2018 Term Loans incurred under Amendment No. 2. The aggregate principal amount of Initial Term Loans outstanding immediately after giving effect to the 2018 Term Loans incurred and funded on the Amendment No. 2 Effective Date is \$634,750,000.

"Intellectual Property" has the meaning assigned to such term in the Collateral Agreement.

"Intellectual Property Security Agreements" means short-form security agreements, suitable for filing with the United States Patent and Trademark Office or the United States Copyright Office (as applicable), with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral.

"Intercompany License Agreement" means any cost sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, intellectual property rights transfer agreement or any related agreements, in each case where all the parties to such agreement are one or more of Holdings or a Restricted Subsidiary.

“Intercreditor Agreement” means the Pari Passu Intercreditor Agreement, the Closing Date Intercreditor Agreement or the Junior Intercreditor Agreement, as applicable.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.07, substantially in the form of Exhibit C-2.

“Interest Payment Date” means (a) with respect to any ABR Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date such Borrowing is disbursed or converted to or continued as a Eurodollar Borrowing and ending on the date that is one, two, three or six months thereafter as selected by the Borrower in its Borrowing Request (or, if available to each Lender participating therein, twelve (12) months or any shorter period as the Borrower may elect); provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month at the end of such Interest Period and (c) no Interest Period shall extend beyond (i) in the case of Term Loans, the Term Maturity Date and (ii) in the case of Revolving Loans, the Revolving Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means in relation to the “LIBO Rate” for any Loan, the rate which results from interpolating on a linear basis between: (i) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period and (ii) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period, each as of approximately 11:00 A.M., London, England time, two (2) Business Days prior to the commencement of such Interest Period; provided that the Interpolated Rate, if negative, shall be deemed to be 0.00%.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other

debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of Holdings and its [Restricted](#) Subsidiaries (i) intercompany advances arising from their cash management, tax, and accounting operations and (ii) intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; provided that, in the event that any Investment is made by Holdings or any Restricted Subsidiary in any Person through one or more other substantially concurrent interim transfers of any amount through any other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of [Section 6.04](#). The amount, as of any date of determination, of (a) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (b) any Investment in the form of a Guarantee shall be 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 in good faith by a Financial Officer, (c) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by a Financial Officer) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (d) any Investment (other than any Investment referred to in clause (a), (b) or (c) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (i) the cost of all additions thereto and minus (ii) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (ii) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of [Section 6.04](#), if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with

GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“Investor” means investors designated by the Sponsor (including Management Investors) who, immediately after giving effect to the Acquisition, will hold Equity Interests in the Company (or any direct or indirect parent thereof) (including, for the avoidance of doubt, the Sponsor).

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time upon and after an IPO, Holdings or a Holdings Parent, as the case may be, the Equity Interests of which were issued or otherwise sold pursuant to the IPO; provided that, immediately following the IPO, the Borrower is a Wholly Owned Subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.

“ISP” means, with respect to any standby 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 reasonably acceptable to the applicable Issuing Bank and in effect at the time of issuance of such Letter of Credit).

“Issuing Bank” means each of (a) the Administrative Agent, (b) each other Revolving Lender as of the Effective Date and (c) each Revolving Lender that shall have become an Issuing Bank hereunder as provided in Section 2.05(k) (other than any Person that shall have ceased to be an Issuing Bank as provided in Section 2.05(l)). Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate or such branch with respect to Letters of Credit issued by such Affiliate or such branch. Jefferies Finance LLC will cause Letters of Credit to be issued by unaffiliated financial institutions and such Letters of Credit shall be treated as issued by Jefferies Finance LLC for all purposes under the Loan Documents.

“Joint Lead Arranger” means Barclays Bank PLC, RBC Capital Markets, SunTrust Robinson Humphrey, Inc. and Jefferies Finance LLC, each in its capacity as joint lead arranger and joint bookrunner, and any permitted successors and assigns of the foregoing.

“Judgment Currency” has the meaning assigned to such term in Section 9.17.

“Junior Financing” means (a) any Indebtedness (other than (i) any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary ~~or any Permitted Unsecured Refinancing Debt~~ or (ii) any Indebtedness in an aggregate principal amount not exceeding \$30,000,000) that is unsecured, that is subordinated in right of payment to the Loan Document Obligations or that is secured by the Collateral on a junior lien basis relative to the liens granted pursuant to the Loan Documents securing the Initial Term Loans (including, for the avoidance of doubt, the Second Lien Term Loans) and (b) any Permitted Refinancing in respect of the foregoing.

“Junior Intercreditor Agreement” means the Junior Intercreditor Agreement substantially in the form of Exhibit E-3 among the Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a junior basis, with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“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 Other Term Loan, any Other Term Commitment, any Other Revolving Loan or any Other Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

“LC Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or renewal or increase of the amount thereof.

“LC Disbursement” means an honoring of a drawing by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate amount of all Letters of Credit that remains available for drawing at such time and (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total LC Exposure 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 3.13 or 3.14 of the ISP or for any Letter of Credit issued with the exclusion of Article 36 of the UCP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the 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.

“LCT Election” has the meaning assigned to such term in Section 1.06.

“LCT Test Date” has the meaning assigned to such term in Section 1.06.

“Legal Reservations” means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court (regardless of whether considered in a proceeding in equity or at law), the limitation of enforcement by Debtor Relief Laws and laws relating to judicial management, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and similar principles or limitations under the laws of any applicable jurisdiction;



(b) the time barring of claims under applicable limitation laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defenses of set-off or counterclaim and similar principles or limitations under the laws of any applicable jurisdiction;

(c) any general principles, reservations or qualifications, in each case as to matters of law as set out in any legal opinion delivered to the Administrative Agent in connection with any provision of any Loan Document;

(d) the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

(e) the principle that in certain circumstances security granted by way of fixed charge may be characterized as a floating charge or that security purported to be constituted by way of an assignment may be recharacterized as a charge;

(f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

(g) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition against transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach entitling the contracting party to terminate or take any other action in relation to such contract or agreement;

(h) [reserved]; and

(i) similar principles, rights and defenses under the laws of any relevant jurisdiction.

“**Lenders**” means the Persons listed on Schedule 2.01 as a Lender and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, an Incremental Facility Amendment, a Loan Modification Agreement or a Refinancing Amendment, in each case, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption and, as the context requires, includes an Issuing Bank and a Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender”.

“**Letter of Credit**” means any standby letter of credit issued pursuant to this Agreement other than any such letter of credit that shall have ceased to be a “Letter of Credit” outstanding hereunder pursuant to Section 9.05.

“Letter of Credit Request” has the meaning assigned to such term in Section 2.05(b).

“Letter of Credit Sublimit” means \$10,000,000.

“LIBO Rate” means, for any Interest Period with respect to a Eurodollar Borrowing, the rate per annum equal to (i) the London interbank offered rate administered by ICE Benchmark Administration Limited (or such other commercially available source providing quotations of that rate as may be designated by the Administrative Agent from time to time, including any Person that takes over administration of the rate) displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters) at approximately 11:00 a.m., London, England time, two (2) London Banking Days prior to the commencement of such Interest Period, for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the Interpolated Rate; provided that the LIBO Rate, if negative, shall be deemed to be 0.00%.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, assignment by way of security, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Limited Condition Transaction” means ~~any~~ (1) any acquisition by the Borrower or one or more Restricted Subsidiaries of (or investment in) any assets, business, division or person/entity permitted pursuant to this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any irrevocable debt repurchase or prepayment, or (3) Restricted Payment by the Borrower or any Restricted Subsidiary permitted pursuant to this Agreement (solely to the extent such Restricted Payment shall be made on or prior to the date that is sixty (60) days after such Restricted Payment is declared); provided that the Consolidated Net Income (and any other financial defined term derived therefrom) shall not include any Consolidated Net Income of or attributable to the target company or assets associated with any such Limited Condition Transaction for usages other than in connection with the applicable transaction pertaining to such Limited Condition Transaction unless and until the closing of such Limited Condition Transaction shall have actually occurred.

“Loan Document Obligations” means the due and punctual payment by the Borrower of (i) the principal of the Loans and LC Disbursements, and all accrued and unpaid interest thereon at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expenses, reimbursement obligations and indemnification obligations and obligations to provide cash

collateral, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding); provided that for the avoidance of doubt, the “Loan Document Obligations” of any Loan Party shall not include any Excluded Swap Obligation of such Loan Party.

“Loan Documents” means this Agreement, any Refinancing Amendment, Amendment No. 1, Amendment No. 2, any Loan Modification Agreement, any Incremental Facility Amendment, the Guarantee Agreement, the Collateral Agreement, the other Security Documents, the Closing Date Intercreditor Agreement and any other Intercreditor Agreement (if applicable), except for purposes of Section 9.02, any Note delivered pursuant to Section 2.09(e), and any other document entered into or delivered by a Loan Party in connection with the foregoing and designated by the Borrower as a Loan Document therein for purposes of this Agreement.

“Loan Equivalent” has the meaning specified in the definition of “Required Additional Debt Terms”.

“Loan Guarantors” means Holdings and the Subsidiary Loan Parties, in each case, to the extent such entity provides a guaranty of the Secured Obligations.

“Loan Modification Agreement” means a Loan Modification Agreement, among the Borrower, and one or more Accepting Lenders, and acknowledged by the Administrative Agent, effecting one or more Permitted Amendments and such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.24.

“Loan Modification Offer” has the meaning specified in Section 2.24(a).

“Loan Parties” means the Loan Guarantors and the Borrower.

“Loans” means the loans made by the Lenders and Swing Line Lender to the Borrower pursuant to this Agreement.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Majority in Interest”, when used in reference to Lenders of any Class, means, at any time, (a) in the case of the Revolving Lenders, Lenders having Revolving Exposures and unused Revolving Commitments representing more than 50% of the sum of the aggregate Revolving Exposures and the unused aggregate Revolving Commitments at such time and (b) in the case of the Term Lenders of any Class, Lenders holding outstanding Term Loans of such Class representing more than 50% of all Term Loans of such Class outstanding at such time; provided that whenever there are one or more Defaulting Lenders, the total outstanding Term Loans and Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender shall be excluded for purposes of making a determination of the Majority in Interest.

“Management Investors” means the members of the Board of Directors, officers, employees and shareholders of the Company, the Borrower and/or their respective Subsidiaries (in each case, before giving effect to the Acquisition) who, immediately after giving effect to the Acquisition, are (directly or indirectly through one or more investment vehicles) investors in Holdings or any Holdings Parent and, in each case, each of their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement”.

“Material Adverse Effect” means any event, change or condition that, individually or in the aggregate, has had or could reasonably be expected to have (a) a material adverse effect on the business, assets, financial condition or results of operations of the Loan Parties and their Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, or (c) a material adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness for borrowed money (other than the Loan Document Obligations), Capital Lease Obligations, unreimbursed obligations for letter of credit drawings and financial guarantees (other than ordinary course of business contingent reimbursement obligations) or obligations in respect of one or more Swap Agreements, of any one or more of Holdings and its Restricted Subsidiaries in an aggregate principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Non-Public Information” means (a) if Holdings is a public reporting company, material non-public information with respect to Holdings or its Subsidiaries, or the respective securities of any of the foregoing, and (b) if Holdings is not a public reporting company, information that is (i) of a type that would not be publicly available if Holdings were a public reporting company and (ii) material with respect to Holdings or its Subsidiaries or any of their respective securities for purposes of United States Federal and state securities laws.

“Material Real Property” means any real property (including fixtures) located in the United States of America and owned in fee by any Loan Party with a fair market value, as reasonably determined by the Borrower in good faith, greater than or equal to \$5,000,000.

“Material Subsidiary” means each Wholly Owned Restricted Subsidiary that, as of the last day of the fiscal quarter of Holdings most recently ended, had net revenues or total assets for such quarter in excess of 5.0% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter; provided that in the event that the Immaterial Subsidiaries, taken together, had as of the last day of the fiscal quarter of Holdings’ most recently ended net revenues or total assets in excess of 7.5% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter, as applicable, the Borrower shall designate in writing one or more Immaterial

Subsidiaries to be a Material Subsidiary within ten (10) Business Days of the delivery of financial statements in accordance with Section 5.01(a) or (b) as may be necessary such that the foregoing 7.5% limit shall not be exceeded, and any such Subsidiary shall thereafter be deemed to be an Material Subsidiary hereunder and shall comply with the requirements set forth in Section 5.11 within the time periods set forth therein; provided, further, that the Borrower may re-designate Material Subsidiaries as Immaterial Subsidiaries so long as the Borrower is in compliance with the foregoing.

“Maximum Rate” has the meaning assigned to such term in Section 9.16.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, charge, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time. Each Mortgage shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

“Mortgaged Property” means each parcel of Material Real Property with respect to which a Mortgage will (or is required to be) be granted pursuant to the Collateral and Guarantee Requirement, Section 5.11, Section 5.12 or Section 5.14 (if any).

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and any Restricted Subsidiaries in connection with such event (including attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans or other Indebtedness secured by a Lien that ranks pari passu with or subordinated to the Liens securing the Initial Term Loans and otherwise subject to the terms of Section 2.11(e)) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without

regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, the Borrower or the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by the Borrower or any Restricted Subsidiary and (iii) the amount of all taxes (including Tax Distributions) paid (or reasonably estimated to be payable), the amount of dividends and other restricted payments that Holdings, the Borrower and/or its Restricted Subsidiaries may make pursuant to Section 6.07(a)(vii)(A) or (B) as a result of such event, and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

“New Project” shall mean (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by Holdings or its Subsidiaries which in fact commences operations and (b) each creation (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“Non-Accepting Lender” has the meaning assigned to such term in Section 2.24(c).

“Non-Cash Charges” means (a) any impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities pursuant to GAAP, (b) all losses from Investments recorded using the equity method, (c) all Non-Cash Compensation Expenses, (d) depreciation and amortization including amortization or impairment of intangibles (including goodwill) (including, without limitation, as they relate to amortization of deferred financing fees or costs, Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pension and other post-employment benefits) and (f) other non-cash charges, expenses and losses, including, without limitation, any non-cash translation loss and non-cash expense relating to the vesting of warrants, non-cash asset write-offs or write-downs, non-cash write offs of debt discounts and debt incurrences, non-cash costs and commissions, non-cash discounts and other non-cash fees and charges with respect to Indebtedness, interest rate protection and other hedging agreements, provided, in each case, that if any non-cash charges added back pursuant to clause (iii) of the definition of Consolidated EBITDA represent an accrual or reserve for potential cash items in any future period to the extent the Borrower elects to include such non-cash charges, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent.

“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Non-Refinancing Lender” has the meaning assigned to such term in Section 2.21(b).

“Non-Wholly Owned Subsidiary” of any Person means any subsidiary of such Person other than a Wholly Owned Subsidiary.

“Not Otherwise Applied” means, with reference to the Available Amount or the Available Equity Amount, as applicable, that such amount was not previously applied pursuant to Sections 6.01(a)(xvii), 6.04(m), 6.07(a)(viii) and 6.07(b)(iv).

“Note” means a promissory note of the Borrower, in substantially the form of Exhibit O, payable to a Lender in a principal amount equal to the principal amount of the Revolving Commitment, Swing Line Sublimit or Term Loans, as applicable, of such Lender.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Offered Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Offered Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational, constitutional or governing documents of such Person (including any certificates of incorporation and/or certificates of incorporation on a change of name).

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

“Other Revolving Commitments” means one or more Classes of Revolving Commitments hereunder or extended Revolving Commitments that result from a Refinancing Amendment or a Loan Modification Agreement.

“Other Revolving Loans” means one or more classes of Revolving Loans made pursuant to any Other Revolving Commitment or a Loan Modification Agreement.

“Other Taxes” means any and all present or future recording, filing, stamp, court, registration duties, documentary, intangible, excise, transfer, sales, property or similar Taxes,

charges or levies arising from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than assignment pursuant to [Section 2.19](#)).

“[Other Term Commitments](#)” means one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment or a Loan Modification Agreement.

“[Other Term Loans](#)” means one or more Classes of Term Loans that result from a Refinancing Amendment or a Loan Modification Agreement.

“[Outstanding Amount](#)” means (a) with respect to the Revolving Loans and Swing Line Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or LC Credit Extensions as a Borrowing of Revolving Loans) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any LC Exposure on any date, the outstanding amount thereof on such date after giving effect to any LC Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or LC Credit Extensions as a Borrowing of Revolving Loan) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“[Overnight Rate](#)” means, for any day, the greater of the Federal Funds Effective Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“[Pari Passu Credit Agreement](#)” means that certain Credit Agreement dated as of May 22, 2020 by and among Hoya Intermediate, LLC as Holdings (as defined therein), Hoya Midco, LLC, as Borrower (as defined therein), the lenders party thereto and Wilmington Trust, National Association as Administrative Agent and Collateral Agent (as defined therein) (as amended, restated, amended and restated or otherwise modified from time to time).

“[Pari Passu Intercreditor Agreement](#)” means the Pari Passu Intercreditor Agreement substantially in the form of [Exhibit E-1](#) among the Administrative Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a pari passu basis (but without regard to the control of remedies), with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“[Participant](#)” has the meaning assigned to such term in [Section 9.04\(c\)\(i\)](#).

“[Participant Register](#)” has the meaning assigned to such term in [Section 9.04\(c\)\(ii\)](#).



“Participating Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Patents” has the meaning assigned to such term in the Collateral Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means the purchase or other acquisition, by merger, amalgamation, consolidation or otherwise, by the Borrower or any Subsidiary of any Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person; provided that (a) in the case of any purchase or other acquisition of Equity Interests of another Person, (i) such Person, upon the consummation of such purchase or acquisition, will be a Subsidiary (including as a result of a merger, amalgamation or consolidation between any Subsidiary and such Person), or (ii) such Person is merged or amalgamated into or consolidated with a Subsidiary and such Subsidiary is the surviving entity of such merger, amalgamation or consolidation, (b) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 5.16, (c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to satisfy the requirements set forth in clauses (a), (b), (c) and (d) of the definition of the term “Collateral and Guarantee Requirement” to the extent applicable shall have been taken (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made that are reasonably satisfactory to the Administrative Agent) (unless such newly created or acquired Subsidiary is designated as an Unrestricted Subsidiary pursuant to Section 5.13 or is otherwise an Excluded Subsidiary), provided, however, that to the extent such newly created or acquired Subsidiary will not become a Loan Party (or in the case of an acquisition of assets, the acquired assets are not owned by a Loan Party), the amount of any Investment in such newly created or acquired Subsidiary (or assets, as applicable) does not exceed the greater of (A) \$25,000,000 and (B) 25% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment, (d) Consolidated EBITDA of such Person (after giving effect to any adjustments and add-backs in accordance with the definition of “Consolidated EBITDA”, “Consolidated Net Income”, and “Pro Forma Adjustment”) shall be greater than \$0 for the most recently ended twelve-month period for which financials are available immediately preceding the date on which the relevant binding agreement has been executed and delivered, (e) after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing (or, in the case of an acquisition which is a Limited Condition Transaction, no Event of Default shall have occurred and be continuing at the time of execution of a definitive agreement in respect thereof), (f) such acquisition shall not be hostile and (g) if applicable, such acquisition shall have been approved by the Board of Directors and/or the stockholders or other equityholders of such Person or, if applicable, pursuant to a sale order approved by a bankruptcy court.

“Permitted Amendment” means an amendment to this Agreement and, if applicable the other Loan Documents, effected in connection with a Loan Modification Offer

pursuant to Section 2.24, providing for an extension of a maturity date applicable to the Loans and/or Commitments of the Accepting Lenders and, in connection therewith, (a) a change in the Applicable Rate with respect to the Loans and/or Commitments of the Accepting Lenders, and/or (b) a change in the fees payable to, or the inclusion of new fees to be payable to, the Accepting Lenders, and/or (c) a change in Sections 2.08(b), 2.08(c), 2.10(a), 2.10(c), 2.11(a), 2.11(e) and/or 2.11(f) with respect to the Loans and/or Commitments of the Accepting Lenders and/or (d) additional or modified covenants, events of default, or guarantees or other provisions (it being understood that to the extent that any covenant, event of default, guarantee or such other provision is added or modified for the benefit of any such Loans and/or Commitments, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default, guarantee or other provision is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Loans and/or Commitments, (ii) only applicable after the Latest Maturity Date at the time of such Loan Modification Offer or (iii) in the aggregate, not materially more restrictive to the Loan Parties (as determined in good faith by the Borrower) when taken as a whole, than the terms of the Loans hereunder).

“Permitted Encumbrances” means:

(a) Liens for Taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are not required to be paid pursuant to Section 5.05 (assuming Section 5.05 were applicable thereto);

(b) Liens with respect to outstanding motor vehicle fines and carriers’, warehousemen’s, mechanics’, materialmen’s, landlord’s, repairmen’s or construction contractors’ Liens and other similar Liens, imposed by law or contract (to the extent providing for Liens that are similar in scope to the foregoing), arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days, or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers’ compensation, unemployment insurance, social security, retirement and other similar legislation or (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instrument for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);

(d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, completion guarantees, bankers acceptance facilities and other obligations of a like nature (including those to secure health, safety

and environmental obligations) 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 past practices;

(e) minor survey exceptions, minor encumbrances, covenants, conditions, easements, rights-of-way, restrictions, encroachments, protrusions, by-law, regulation or zoning restrictions, reservations of or rights of others for sewers, electric lines, telegraph and telephone lines, cable television lines, gas and oil pipelines and other similar purposes and other similar encumbrances and minor title defects or irregularities affecting real property, that, in the aggregate, do not materially interfere with the ordinary conduct of the business of Holdings and its Restricted Subsidiaries, taken as a whole, or which are set forth in the title insurance policy delivered with respect to the Mortgaged Property and are “insured over” in such insurance policy;

(f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);

(g) Liens on goods the purchase price of which is financed by a documentary or trade letter of credit issued for the account of the Borrower or any of its Restricted Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments; provided that such Lien secures only the obligations of the Borrower or such Subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;

(h) the filing of UCC (or equivalent) financing statements solely as a precautionary measure or required notice in connection with operating leases or consignment of goods;

(i) rights of recapture of unused real property (other than any Mortgaged Property) in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any Governmental Authority;

(j) Liens in favor of deposit banks or securities intermediaries securing customary fees, expenses or charges in connection with the establishment, operation or maintenance of deposit accounts or securities accounts;

(k) [Reserved];

(l) Liens arising from grants of licenses or sublicenses of Intellectual Property made in the ordinary course of business or that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole; provided that such Liens do not secure any Indebtedness;

(m) rights of setoff, banker’s lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of 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;

(n) [Reserved];

(o) securities to public utilities or to any Governmental Authority when required by the utility or other authority in connection with the supply of services or utilities to the Borrower and any Restricted Subsidiaries;

(p) servicing agreements, development agreements, site plan agreements and other agreements with any Governmental Authority pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially reduce the value of the assets of the Person or materially interfere with the use of such assets in the operation of the business of such Person;

(q) any security or quasi-security arising under any retention-of-title arrangement;

(r) [Reserved];

(s) customary rights of first refusal or first offer, and tag, drag and similar rights in joint venture agreements;

(t) Liens arising from Permitted Investments described in clause (e) of the definition hereof; and

(u) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Requirements of Law in the ordinary course of business.

“Permitted First Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of senior secured notes or senior secured loans (or revolving commitments in respect thereof, with revolving commitments deemed loans in the full amount of such commitment); provided that (i) such Indebtedness is secured by the Collateral (and no other assets which are not Collateral) on a pari passu basis (but without regard to the control of remedies) with the Initial Term Loans, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments” or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by an entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Pari Passu Intercreditor Agreement and, if applicable, the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement; provided that if such Indebtedness is the initial Permitted First Priority Refinancing Debt incurred by the Borrower, then the Borrower, the other Loan Parties, the Administrative Agent and the Senior Representative for such

Indebtedness shall have executed and delivered a customary intercreditor agreement with the Administrative Agent and/or Collateral Agent substantially in the form of the Pari Passu Intercreditor Agreement, together with any immaterial changes to provide for the sharing of the Collateral on a pari passu basis among the holders of the Secured Obligations that constitute Senior Secured First Lien Indebtedness and the holders of such Permitted First Priority Refinancing Debt (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans). Permitted First Priority Refinancing Debt will include any Registered Equivalent Note issued in exchange therefor.

“Permitted Holders” means the Sponsor and limited partners of the Sponsor, Vista and limited partners of Vista, and the Management Investors.

“Permitted Investments” means any of the following, to the extent owned by Holdings or any Restricted Subsidiary:

(a) Dollars or such other currencies held by it from time to time in the ordinary course of business;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of such country or such member state of the European Union is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks or (y) \$100,000,000 in the case of non-U.S. banks, or the ~~U.S.~~ Dollar Equivalent (any such bank in the foregoing clauses (i) or (ii) being an “Approved Bank”), in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of \$250,000,000 or its equivalent for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated

A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody's, in which such Person shall have a perfected first priority security interest (subject to no other Liens) or title to which shall have been transferred to such Person and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of \$250,000,000 or its equivalent, or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(g) securities with average maturities of twelve (12) months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, Canada, Switzerland, United Kingdom, a member of the European Union or by any political subdivision or taxing authority of any such state, member, commonwealth or territory having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) investments with average maturities of twelve (12) months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any [Restricted](#) Subsidiary organized or incorporated in such jurisdiction;

(j) investments, classified in accordance with GAAP as current assets of the Borrower or any [Restricted](#) Subsidiary, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000 or its equivalent, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;

(k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P

is at least “A-2” or the equivalent thereof or from Moody’s is at least “P-2” or the equivalent thereof (any such bank being an “Approved Foreign Bank”), and in each case with maturities of not more than twenty-four (24) months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

“Permitted Junior Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of junior lien secured notes or junior lien secured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness is secured by the Collateral on a junior lien basis to the Initial Term Loans and/or initial Revolving Commitments and the obligations in respect of any Permitted First Priority Refinancing Debt, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments”, offers upon an event of default or excess cash flow payments (subject to the prior payment of the Loan Document Obligations or the prior offer thereof to prepay the Loan Document Obligations)) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by any entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement, as applicable; provided that if such Indebtedness is the initial Permitted Junior Priority Refinancing Debt incurred by the Borrower, then the Borrower, the other Loan Parties, the Administrative Agent and the Senior Representatives for such Indebtedness shall have executed and delivered the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement, as applicable. Permitted Junior Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees (including original issue discount and fees incurred in connection with the resulting Indebtedness) and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder; provided that the principal amount (or accreted value, if applicable) may exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended to the extent such excess amount (and the terms thereof) is otherwise permitted to be incurred under Section 6.01 (provided that such excess amount shall constitute a utilization of the relevant basket or

exception under Section 6.01 pursuant to which such excess amount is permitted to be incurred), (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.01(a)(v), (a)(vii) or (a)(viii) (or except in the case of customary bridge loans which, subject to customary conditions (including no event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended), Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and (except in the case of revolving commitments) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended and (c) (1) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Document Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Document Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith) or otherwise reasonably satisfactory to the Administrative Agent and (2) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of security to the Initial Term Loans, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of security to the Initial Term Loans on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith) or otherwise reasonably satisfactory to the Administrative Agent. For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes a "Permitted Refinancing" and (y) a Permitted Refinancing includes successive Permitted Refinancings of the same Indebtedness.

"Permitted Reorganization" means any re-organization or other similar activities among Holdings, the Borrower and the Restricted Subsidiaries related to Tax planning and re-organization, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with the Collateral and Guarantee Requirement and Sections 5.11 and 5.12, (b) taken as a whole, the value of the Collateral securing the Secured Obligations and the Guarantees by the Loan Guarantors of the Secured Obligations are not materially reduced as reasonably determined by the Administrative Agent and (c) the Liens in favor of the ~~Administrative~~Collateral Agent for the benefit of the Secured Parties under the Security Documents are not materially impaired in the reasonable judgment of the Administrative Agent.



“Permitted Unsecured Refinancing Debt” means any unsecured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of unsecured notes or unsecured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness or a Permitted Refinancing of Incremental Equivalent Debt, (ii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments” or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iii) such Indebtedness is not guaranteed by any entity that is not a Loan Party, and (iv) such Indebtedness is not secured by any Lien on any property of Holdings, the Borrower or any Restricted Subsidiary. Permitted Unsecured Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

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

“Plan” means any employee pension benefit plan as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is or has been in the past six years sponsored, maintained or required to be contributed to by a Loan Party or any ERISA Affiliate.

“Planned Expenditures” has the meaning assigned to such term in clause (b) of the definition of “Excess Cash Flow”.

“Platform” has the meaning assigned to such term in Section 5.01.

“Prepayment Event” means:

(a) (i) any sale, transfer or other disposition of any property or asset of Holdings or any of its Restricted Subsidiaries permitted by Sections 6.05(f), (j), (k), (p) and (t), other than dispositions resulting in aggregate Net Proceeds not exceeding (A) \$15,000,000 in the case of any single transaction or series of related transactions and (B) \$30,000,000 for all such transactions during any fiscal year of Holdings and (ii) any Casualty Event; or

(b) the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 (other than any Credit Agreement Refinancing Indebtedness) or permitted by the Required Lenders pursuant to Section 9.02.

“Prepayment Percentage” means:

(a) with respect to Prepayment Events described in clause (b) of the definition of “Prepayment Event”, 100%; and

(b) with respect to Prepayment Events described in clause (a) of the definition of “Prepayment Event”, (x) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Effective Date, 100% and (y) thereafter, the applicable percentage set forth below under the caption “Prepayment Percentage”, as determined by reference to the Senior Secured Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d).

<u>Senior Secured Net Leverage Ratio</u>	<u>Prepayment Percentage</u>
Greater than 6.00 to 1.00	100%
Less than or equal to 6.00 to 1.00 but greater than 5.25 to 1.00	50%
Less than or equal to 5.25 to 1.00	0%

For purposes of the foregoing, each change in the Prepayment Percentage resulting from a change in the Senior Secured Net Leverage Ratio shall be effective during the period commencing on and including the date a Compliance Certificate is delivered pursuant to Section 5.01(d) indicating such change and ending on the date immediately preceding the effective date of the next such change.

“Prime Rate” means, for any day, the “Prime Rate” as published by the Wall Street Journal for such day or, if the Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as ~~reasonable~~ reasonably determined by the Administrative Agent); each change in the Prime Rate shall be effective on the date that such change is effective. The Prime Rate is not necessarily the lowest rate charged by any financial institution to its customers.

“Pro Forma Adjustment” means, for any Test Period with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of Holdings, the pro forma increase in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any applicable acquisition (including the Transactions), Specified Transactions, dispositions, operational change or initiative as a result of actions taken or expected to be taken or a plan for realization shall have been established, for the purposes of realizing cost savings, operating expense reductions or other operating improvements and synergies; provided that (A) such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reduction, other operating improvements and synergies (on a “run rate” basis) had been realized on the first day of such period and, for purposes of projecting

such pro forma increase to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and “run rate” synergies had been realized commencing on the first day of such period and that such cost savings, operating expense reductions, other operating improvements and synergies were realized on a “run rate” basis during the entirety of such Test Period, in each case, net of the amount of actual benefits realized from such actions, (B) any Pro Forma Adjustment to Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate and (C) any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings, operating expense reductions, other operating improvements and synergies or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period and shall be subject to the 25% cap in clause (b) of the definition of Consolidated EBITDA as provided therein.

“Pro Forma Basis”, “Pro Forma Compliance” and “Pro Forma Effect” mean, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis or after giving Pro Forma Effect thereto, that (a) to the extent applicable, the Pro Forma Adjustment and the Pro Forma Disposal Adjustment shall have been made and (b) the Transactions, all Specified Transactions, operational changes or initiatives described in the definition of “Pro Forma Adjustment” or “Consolidated EBITDA” and the following transactions in connection therewith that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made shall be deemed to have occurred as of the first day of the applicable period of measurement in such test, financial ratio or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Transaction, Specified Transaction, operational change or initiative (A) in the case of a Disposition of all or substantially all Equity Interests in any subsidiary of Holdings or any division, product line, or facility used for operations of Holdings, the Borrower or any of their respective Subsidiaries, shall be excluded and (B) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction”, shall be included, (ii) any retirement of Indebtedness, and (iii) any Indebtedness incurred or assumed by Holdings, the Borrower or any of their respective Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination and interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to operating expense reductions that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on Holdings, the Borrower or any of their respective Subsidiaries, and (z) factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

“Pro Forma Disposal Adjustment” means, for any Test Period with respect to any Sold Entity or Business, the pro forma increase or decrease in Consolidated EBITDA projected by the Borrower in good faith to be realizable within eighteen (18) months following the date the applicable Person, property, business, line of business, division, business unit or asset becomes a Sold Entity or Business as a result of contractual arrangements between the Borrower or any Restricted Subsidiary entered into with such Sold Entity or Business at the time of its disposal which represent an increase or decrease in Consolidated EBITDA which is incremental to the Disposed EBITDA of such Sold Entity or Business for the most recent Test Period prior to its disposal. Any such pro forma increase or decrease in Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate.

“Pro Forma Entity” has the meaning given to such term in the definition of “Acquired EBITDA”.

“Pro Forma Financial Statements” means the unaudited consolidated pro forma balance sheet of Holdings and its Subsidiaries as of March 31, 2017, and the related unaudited pro forma consolidated statement of income of Holdings and its Subsidiaries as of and for the twelve-month period then ended, prepared after giving effect to the Transactions (and which may exclude, at the Borrower’s option, the impact of purchase accounting effects required by GAAP) as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) and any other adjustments as agreed by the Sponsor and the Joint Lead Arrangers (which need not be prepared in compliance with Regulations S-X of the Securities Act of 1933, as amended, or (at the option of the Borrower) include adjustments for purchase accounting).

“Proposed Change” has the meaning assigned to such term in Section 9.02(c).

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning assigned to such term in Section 5.01.

“Qualified Equity Interests” means Equity Interests of Holdings or the Borrower other than Disqualified Equity Interests.

“Qualified Securitization Facility” means any Securitization Facility that meets the following conditions: (a) the board of directors of the Borrower shall 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 Securitization Subsidiary and (b) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower).

“Qualifying Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Qualified Reporting Subsidiary” means any wholly-owned Restricted Subsidiary of Holdings that, together with its consolidated Restricted Subsidiaries, constitutes substantially all of the assets of Holdings and its consolidated Subsidiaries.

“RBC Capital Markets” means the investment banking businesses of Royal Bank of Canada and its affiliates.

“Refinanced Debt” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness”.

“Refinancing Amendment” means an amendment to this Agreement in form reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower and Holdings, (b) the Administrative Agent and (c) each applicable Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.21.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Reimbursement Date” has the meaning assigned to such term in Section 2.05(f).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, controlling persons, trustees, administrators, managers, advisors and representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns of each of the foregoing.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building, or any occupied structure or facility.

“Removal Effective Date” has the meaning assigned to such term in Section 8.06.

“Repricing Transaction” means (a) the incurrence by the Borrower or any Loan Guarantor of any Indebtedness in the form of term debt financing (i) having an Effective Yield that is less than the Effective Yield for the Initial Term Loans and (ii) the proceeds of which are substantially concurrently used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, outstanding principal of Initial Term Loans or (b) any amendment to this Agreement with respect to the Initial Term Loans that results in an effective reduction in the Effective Yield for the Initial Term Loans, except, in each case, in connection with (1) any event that is not consummated for the primary purpose of lowering the Effective Yield for the Term Facility and (2) (A) a Change in Control, (B) an Acquisition Transaction or (C) an IPO. Any determination by the Administrative Agent with respect to whether a Repricing Transaction

shall have occurred shall be made in the reasonable judgment of the Administrative Agent consistent with generally accepted financial practices and shall be conclusive and binding on all Lenders holding the Initial Term Loans.

“Required Additional Debt Terms” means with respect to any Indebtedness, (a) such Indebtedness does not mature earlier than the Latest Maturity Date for the Initial Term Loans (except in the case of customary bridge loans which subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature earlier than the Latest Maturity Date for the Initial Term Loans), (b) such Indebtedness does not have a shorter Weighted Average Life to Maturity than the Initial Term Loans, (c) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Initial Term Loans, such Indebtedness does not have scheduled amortization or mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments”, offers upon an event of default or, in the case of junior lien secured debt, excess cash flow payments (subject to the prior prepayment of the Loan Document Obligations or the prior offer thereof to prepay the Loan Document Obligations that constitute Senior Secured First Lien Indebtedness)) that could result in redemptions of such Indebtedness prior to the Latest Maturity Date, (d) such Indebtedness is not guaranteed by any entity that is not a Loan Party, (e) such Indebtedness that is secured (i) is not secured by any assets not securing the Secured Obligations and (ii) is subject to the relevant Intercreditor Agreement, (f) the terms and conditions of such Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) are not materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness than the terms and conditions of this Agreement (when taken as a whole) are to the Lenders (unless (x) such terms and conditions are applicable only to periods after the Latest Maturity Date at such time, (y) the Lenders also receive the benefit of such more favorable terms and conditions or (z) such terms are reasonably satisfactory to the Administrative Agent) (together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial covenant) (it being understood that, to the extent that any covenant, event of default, guarantee or other provision is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of any such Indebtedness in connection therewith or (ii) only applicable after the Latest Maturity Date at such time); provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination and (g) if such Indebtedness is secured on a pari passu basis with the Initial Term Loans and ranks pari passu with the Initial Term Loans in right of payment (a “Loan Equivalent”) and such Loan Equivalent is incurred prior to the first anniversary of the

Effective Date, in the event that the Effective Yield for any such Loan Equivalent is greater than the Effective Yield for the Initial Term Loans by more than 0.50% per annum, then the Effective Yield for the Initial Term Loans shall be increased (without the requirement for any Lender consent) to the extent necessary so that the Effective Yield for the Initial Term Loans is equal to the Effective Yield for such Loan Equivalent minus 0.50% per annum; provided that if such Loan Equivalent includes an interest rate floor greater than the applicable interest rate floor under the Initial Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the interest rate margin under the Initial Term Loans shall be required, but only to the extent an increase in the interest rate floor in the Initial Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the Initial Term Loans shall be increased to the extent of such differential between interest rate floors.

“Required Lenders” means, at any time, Lenders having Revolving Exposures, Term Loans and unused Commitments representing more than 50% of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at such time; provided that to the extent set forth in Section 9.02 or Section 9.04 whenever there are one or more Defaulting Lenders, the total outstanding Term Loans and Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further, that, with respect to any determination of Required Lenders, Affiliated Debt Funds cannot, in the aggregate, account for more than 49.9% of the amounts included in such determination as provided in Section 9.04(f)(ii); provided, further, that, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“Required Revolving Lenders” means, at any time, Revolving Lenders having Revolving Exposures and unused Commitments representing more than 50.0% of the aggregate Revolving Exposures and unused Commitments at such time; provided that to the extent set forth in Section 9.02 or Section 9.04 whenever there are one or more Defaulting Lenders, the total outstanding Revolving Exposures of, and the unused Revolving Commitments of, each Defaulting Lender, shall be excluded for purposes of making a determination of Required Revolving Lenders; provided, further, that, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, statutory instruments, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Resignation Effective Date” has the meaning assigned to such term in Section 8.06.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, director, company secretary or other similar officer, manager or a member of the Board of Directors of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any authorized signatory, director, manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a)(i) of the definition of the term “Collateral and Guarantee Requirement”, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests in Holdings, the Borrower or any Restricted Subsidiary.

“Restricted Prepayment Event” has the meaning assigned to such term in Section 2.11(g).

“Restricted Subsidiary” means, unless otherwise specified, any Subsidiary of Holdings, other than an Unrestricted Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.11(e).

“Revaluation Date” means (a) with respect to any Alternative Currency Loan, each of the following: (i) each date of a Eurodollar Borrowing of such Alternative Currency Loan and (ii) each date of a continuation of such Alternative Currency Loan pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent and the Borrower shall reasonably determine; and (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) each date of issuance of such Letter of Credit, (ii) each date of an amendment of such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing Bank under such Letter of Credit, and (iv) such additional dates as the Administrative Agent and the Borrower shall reasonably determine.

“Revolving Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

“Revolving Commitment” means, with respect to each Lender, its obligation to (i) make Revolving Loans, (ii) acquire participations in Swing Line Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Exposure hereunder and (iii) acquire participations in Letters of Credit in an aggregate principal



amount at any time outstanding not to exceed the amount set forth opposite such Lender's name in Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 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) a Refinancing Amendment, (iii) an Incremental Revolving Commitment Increase or (iv) a Loan Modification Agreement. The initial amount of each Lender's Revolving Commitment is set forth on Schedule 2.01 or, in each case, in the Assignment and Assumption, Loan Modification Agreement, Incremental Facility Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. As of the Effective Date, the initial aggregate amount of the Lenders' Revolving Commitments is \$50,000,000.

"Revolving Exposure" means, with respect to any Revolving Lender at any time, the sum of the outstanding principal amount of such Revolving Lender's Revolving Loans, its LC Exposure and its Swing Line Obligations at such time.

"Revolving Lender" means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" mean a Loan made by a Revolving Lender pursuant to Section 2.01.

"Revolving Maturity Date" means (i) June 30, 2022 (or if such day is not a Business Day, the immediately preceding Business Day) or (ii) with respect to any Revolving Lender that has extended its Revolving Commitment pursuant to a Permitted Amendment and with respect to the Swing Line Lender and any Issuing Bank that has consented to such extension, the extended maturity date set forth in any such Loan Modification Agreement.

"S&P" means S&P Global Ratings, and any successor thereto.

"Sanctioned Country" means, at any time, a country or territory which is the target of any comprehensive Sanctions (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctions" means any economic sanctions administered or enforced by the United States Government (including without limitation, OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury or other relevant sanctions authority ("Sanctions Authorities").

"Sanctions Authorities" has the meaning assigned to such term in the definition of "Sanctions".

"SEC" means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

"Second Lien Administrative Agent" has the meaning assigned to such term in the definition of "Second Lien Credit Agreement".

“Second Lien Credit Agreement” means the Second Lien Credit Agreement, dated as of the Effective Date (as amended, restated, supplemented, extended, increased, renewed, refunded, replaced, restructured or refinanced or otherwise modified, in each case to the extent not prohibited by the Closing Date Intercreditor Agreement), among the Borrower, Holdings, Crescent Mezzanine Partners VII, L.P., and U.S. Bank, National Association as administrative agent (the “Second Lien Administrative Agent”) and collateral agent and the other lenders and financial institutions party thereto.

“Second Lien Loan Documents” means the Second Lien Credit Agreement and all security agreements, guarantees, pledge agreements, notes and other agreements or instruments executed in connection therewith, including all “Loan Documents” (or any comparable term) (as defined in the Second Lien Credit Agreement).

“Second Lien Permitted Incremental Equivalent Debt” means the “Incremental Equivalent Debt” as defined in the Second Lien Credit Agreement (as in effect on the Effective Date).

“Second Lien Term Loans” means the “Term Loans” as defined in the Second Lien Credit Agreement.

“Secured Cash Management Obligations” means the due and punctual payment and performance of all obligations of Holdings, the Borrower and any Restricted Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds (collectively, “Cash Management Services”) provided to Holdings, the Borrower or any Restricted Subsidiary (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Administrative Agent or any of its Affiliates, (b) owed on the Effective Date to a Person that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) owed to a Person that is an Agent, a Lender or an Affiliate of an Agent or Lender at the time such obligations are incurred, for which such Loan Party agrees to provide security and in each case that has been designated to the Administrative Agent in writing by the Borrower as being a “Secured Cash Management Obligations” for purposes of the Loan Documents; it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article VIII, Section 9.03 and Section 9.09 and the Closing Date Intercreditor Agreement as if it were a Lender.

“Secured Obligations” means (a) the Loan Document Obligations, (b) the Secured Cash Management Obligations and (c) the Secured Swap Obligations (excluding with respect to any Loan Guarantor, Excluded Swap Obligations of such Loan Guarantor).

“Secured Parties” means (a) each Lender, (b) each Issuing Bank, (c) the Administrative Agent (and each co-agent or sub-agent appointed by the Administrative Agent pursuant to Section 8.05), (d) the Collateral Agent, (e) each Joint Lead Arranger, (f) each Person to whom any Secured Cash Management Obligations are owed, (g) each counterparty to any Swap Agreement the obligations under which constitute Secured Swap Obligations, (h) the

beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, (i) the Swing Line Lender and (j) the permitted successors and assigns of each of the foregoing.

“Secured Swap Obligations” means the due and punctual payment and performance of all obligations of Holdings and its Restricted Subsidiaries under each Swap Agreement that (a) is with a counterparty that is the Administrative Agent or any of its Affiliates, (b) is in effect on the Effective Date with a counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent as of the Effective Date or (c) is entered into after the Effective Date with any counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Swap Agreement is entered into, for which such Loan Party agrees to provide security.

“Securitization Assets” means the accounts receivable, royalty and other similar rights to payment and any other assets related thereto subject to a Qualified Securitization Facility that are customarily sold or pledged in connection with securitization transactions and the proceeds thereof.

“Securitization Facility” means any of one or more receivables securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties and indemnities made in connection with such facilities) to Holdings, the Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary) pursuant to which Holdings, the Borrower or any Restricted Subsidiary sells or grants a security interest in its accounts receivable or assets related thereto that are customarily sold or pledged in connection with securitization transactions to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“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 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 Documents” means the Collateral Agreement, the Mortgages and each other security agreement or pledge agreement executed and delivered pursuant to the Collateral and Guarantee Requirement, Sections 5.11, 5.12 or 5.14 to secure any of the Secured Obligations.

“Senior Representative” means, with respect to any series of Indebtedness permitted by this Agreement to be secured on the Collateral on a pari passu or junior basis, the trustee, administrative agent, collateral agent, security agent or similar agent 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.

“Senior Secured First Lien Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries other than the Second Lien Term Loans and any other such Indebtedness to the extent secured on a junior basis to the Liens granted under the Security Documents in favor of the Collateral Agent for the benefit of the Secured Parties in respect of the Initial Term Loans.

“Senior Secured First Lien Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured First Lien Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Senior Secured Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries.

“Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Settlement” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“Settlement Asset” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

“Settlement Indebtedness” means any payment or reimbursement obligation in respect of a Settlement Payment.

“Settlement Lien” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“Settlement Payment” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“Settlement Receivable” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“Sold Entity or Business” has the meaning assigned to such term in the definition of the term “Consolidated EBITDA”.

“Solicited Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Solicited Discounted Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Solicited Discounted Prepayment Notice” means an irrevocable written notice of a Borrower Solicitation of Discounted Prepayment Offers made pursuant to Section 2.11(a)(iii)(D) substantially in the form of Exhibit K.

“Solicited Discounted Prepayment Offer” means the irrevocable written offer by each Term Lender, substantially in the form of Exhibit L, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“Solicited Discounted Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Specified Acquisition Agreement Representations” means the representations in the Acquisition Agreement made with respect to the Company that are material to the interests of the Lenders, but only to the extent that Holdings, the Borrower or any Affiliate thereof has the right (determined without regard to any notice requirement) to terminate its obligations under the Acquisition Agreement, or the right to decline to consummate the Acquisition, as a result of a breach of such representations in the Acquisition Agreement.

“Specified Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Notice” means an irrevocable written notice of the Borrower of Specified Discount Prepayment made pursuant to Section 2.11(a)(iii)(B) substantially in the form of Exhibit G.

“Specified Discount Prepayment Response” means the irrevocable written response by each Term Lender, substantially in the form of Exhibit H, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(3).

“Specified Event of Default” means an Event of Default under Section 7.01(a), (b), (h) or (i).

“Specified Representations” means those representations and warranties of the Borrower and Holdings and of the other Guarantors (solely with respect to the Subsidiary Guarantee) set forth in Sections 3.01(a) (with respect to organization and existence) and (b) (with respect to due authorization, execution, delivery and performance of the Loan Documents), 3.02 (with respect to due authorization, execution, delivery and validity and enforceability of the Loan Documents), 3.03(b)(i) (with respect to entering into and performance of the Loan Documents), 3.08, 3.14, 3.15, 3.16(a), use of proceeds not violating 3.16(b) or 3.16(c), and 3.17.

“Specified Transaction” means any Investment, acquisition (including the commitment of activities constituting such business), sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, the termination or discontinuation of activities constituting any business, commencement of a New Project or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis after giving Pro Forma Effect thereto.

“Sponsor” means each of GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP and in each case, each of their respective associated funds and each of their respective Affiliates (other than any portfolio companies of any of the foregoing).

“Sponsor Model” means the Sponsor model delivered to the Joint Lead Arrangers on May 16, 2017.

“Starter Basket” has the meaning assigned to such term in the definition of “Available Amount”.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve, liquid asset or similar percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by any Governmental Authority to be applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities. Such reserve, liquid asset or similar percentages shall include those imposed pursuant to Regulation D of the Board of Governors. Eurodollar Loans shall be deemed to be subject to such reserve, liquid asset or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any other Requirements of Law. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Submitted Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Submitted Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“subsidiary” means, with respect to any Person (the “parent”) at any date (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more subsidiaries of such Person owns more than a 50% equity interest at the time.

“Subsidiary” means any direct or indirect subsidiary of Holdings (unless otherwise specified).

“Subsidiary Loan Party” means each Restricted Subsidiary of Holdings (other than the Borrower) that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Swap 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.

“Swap Obligations” means, with respect to any Person, the obligations of such Person under any Swap Agreement.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Facility” means the swing line loan facility made available by the Swing Line Lenders pursuant to Section 2.04.

“Swing Line Lender” means Barclays Bank PLC, in its capacity as a lender of Swing Line Loans hereunder, or any successor lender of Swing Line Loans hereunder.

“Swing Line Loan” means any Loan made pursuant to Section 2.04.

“Swing Line Loan Notice” means a written notice of a Swing Line Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit C-3 hereto.

“Swing Line Obligations” means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding. The Swing Line Obligations of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Swing Line Obligations at such time.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the aggregate amount of the Revolving Commitments. The Swing Line Sublimit is part of, and not in addition to, the Revolving Commitments.

“Target Person” has the meaning assigned to such term in Section 6.04.

“Tax Distributions” has the meaning assigned to such term in Section 6.07(a)(vii)(A).

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

“Term Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder. The amount of each Lender’s Term Commitment as of the Effective Date is set forth on Schedule 2.01. As of the Effective Date, the total Term Commitment is \$525,000,000.

“Term Lender” means a Lender with a Term Commitment or an outstanding Term Loan.

“Term Loans” means Initial Term Loans, Other Term Loans and Incremental Term Loans, as the context requires.

“Term Maturity Date” means June 30, 2024 (or, with respect to any Term Lender that has extended the maturity date of its Term Loans in accordance with the terms of this Agreement, the extended maturity date set forth in the applicable Loan Modification Agreement, Refinancing Amendment or other amendment hereto).

“Termination Date” means the date on which all Commitments have expired or been terminated, all Secured Obligations have been paid in full in cash (other than (x) Secured Swap Obligations not yet due and payable, (y) Secured Cash Management Obligations not yet due and payable and (z) contingent obligations not yet accrued and payable) and all Letters of Credit have expired or been terminated (other than Letters of Credit that have been cash collateralized or backstopped by an institution and otherwise pursuant to arrangements reasonably satisfactory to the applicable Issuing Bank).



“Test Period” means, at any date of determination, the period of four consecutive fiscal quarters of Holdings then last ended as of such time for which financial statements have been delivered pursuant to Section 5.01(a) or (b) or, at the option of the Borrower, in connection with a Limited Condition Transaction, the period of four consecutive fiscal quarters of Holdings for which financial statements have been delivered to the Administrative Agent on or prior to the applicable LCT Test Date; provided that for any date of determination before the delivery of the first financial statements pursuant to Section 5.01(a) or (b), the Test Period shall be the period of four consecutive fiscal quarters of Holdings ended as of March 31, 2017.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Total Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Trademarks” has the meaning assigned to such term in the Collateral Agreement.

“Transaction” means the each of the following transactions consummated or to be consummated in connection therewith:

(a) the contribution (the “Equity Contribution”) of cash by the Investors to one or more Holdings Parents in an aggregate amount that, when taken together with the aggregate amount of all equity rolled over, issued directly or indirectly to, or otherwise directly or indirectly acquired, by any existing shareholders, board members and/or management of the Company (collectively, the “Other Equity”), is not less than 35% of the sum of (i) the aggregate principal amount of the Senior Credit Facilities funded on the Effective Date and (ii) the Equity Contribution and the Other Equity, provided that the Sponsor shall directly or indirectly own at least 50.1% of the voting equity interests of Holdings immediately following the consummation of the Transactions;

(b) the Acquisition and the Merger (as defined in the Acquisition Agreement), if applicable, the other transactions described in the Acquisition Documents or related thereto;

(c) the execution and delivery of Loan Documents to be entered into on the Effective Date and the funding of the Initial Term Loans on the Effective Date;

(d) the execution and delivery of Second Lien Loan Documents to be entered into on the Effective Date and the funding of the Second Lien Term Loans on the Effective Date;

(e) the refinancing or repayment of all existing third party Indebtedness for borrowed money of the Company and its subsidiaries under the Existing Credit Agreements and the termination of all commitments, Guarantees and security interests in respect thereof (the “Refinancing”); and

(f) the payment of the Transaction Costs.

“Transaction Costs” means all fees, premiums, original issue discount, costs and expenses incurred or payable by Holdings, the Borrower or any other Subsidiary in connection with the Transactions, including fees, costs and expenses of any counsel, consultants and other advisors.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or Alternate Base Rate.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” and “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UCP” means the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce, in its Publication No. 600 (or such later version thereof as may be reasonably acceptable to the applicable Issuing Bank and in effect at the time of issuance of such Letter of Credit). On an exception basis and if specifically requested by the Borrower, a Letter of Credit may be issued subject to UCP.

“Unaudited Financial Statements” means unaudited consolidated balance sheets and the related consolidated statements of comprehensive income and cash flows of the Company and its Subsidiaries for the fiscal quarter ended March 31, 2017.

“Unfunded Pension Liability” of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

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

“United States Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(C).

“Unrestricted Subsidiary” means any Subsidiary designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.13 subsequent to the Effective Date.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“Vista” means Vista Equity Partners Management, LLC and its associated funds and each of their respective Affiliates, including Vista Equity Partners Fund IV, L.P. and Vista Equity Partners Fund V, L.P. (other than any portfolio companies of any of the foregoing).

“Voluntary Prepayment Amount” has the meaning set forth in the definition of “Incremental Cap”.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness, in each case, without giving effect to any reductions of amortization or other scheduled payments for periods where amortization has been reduced as a result of the prepayment of the applicable Indebtedness.

“Wholly Owned Restricted Subsidiary” means any Restricted Subsidiary that is a Wholly Owned Subsidiary.

“Wholly Owned Subsidiary” means, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of the preceding clauses (i) and (ii), director’s qualifying shares and/or other nominal amount of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

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

“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.

#### SECTION 1.02 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan” or “ABR Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing” or “Term Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”). Borrowings of Revolving Loans are sometimes referred to herein as “Revolving Borrowings”.

### SECTION 1.03 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference to any Organizational Document, agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such Organizational Document, agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or other modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any Requirement of Law or any law statute, treaty, rule, guideline, regulation, ordinance or code, shall, unless otherwise specified, refer to such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code as amended, modified or supplemented from time to time and shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, interpreting or administering such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code.

### SECTION 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise prescribed herein.

(b) Notwithstanding anything in this Agreement to the contrary, for purposes of determining compliance with any test contained in this Agreement, the Total Net Leverage Ratio, the Senior Secured First Lien Net Leverage Ratio and the Senior Secured Net Leverage Ratio shall be calculated on a Pro Forma Basis to give effect to the Transaction and all Specified Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made.

### SECTION 1.05 Effectuation of Transactions.

All references herein to Holdings, the Borrower and their respective Subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of

Holdings, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

#### SECTION 1.06 Limited Condition Transactions.

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, when calculating any applicable ratio, the amount or availability of the Available Amount or any other basket (including incremental facilities or any baskets based on Consolidated EBITDA or total assets), designating Unrestricted Subsidiaries or determining other compliance with this Agreement (including the determination of compliance with representations, warranties or any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Limited Condition Transaction, the date of determination of such ratio, the amount or availability of the Available Amount or any other basket and determination of the accuracy of any representation or warranty or whether a Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant or provision shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), be deemed to be (i) with respect to debt prepayments, the time of delivery of irrevocable notice with respect to such prepayment, (ii) with respect to Restricted Payments, the time of the declaration of such Restricted Payments and (iii) with respect to all other Limited Condition Transactions, the date the definitive agreements for such Limited Condition Transaction are entered into (the applicable date in clauses (i), (ii) or (iii), the "LCT Test Date") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Transaction or other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable Test Period ending prior to the LCT Test Date or on the LCT Test Date, as applicable, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower and its Subsidiaries) at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Transaction or other related transactions. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other transaction on or 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 for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated (subject to the proviso to the definition of "Limited Condition Transaction").

For purposes of determining compliance as of any date with any covenant or incurrence test (other than Section 6.11 and the calculation of compliance with any financial ratio for purposes of taking action hereunder) under any Loan Document or for purposes of making any determination under any Default or Event of Default hereunder or for any other specified purpose hereunder, amounts incurred or outstanding in currencies (other than Dollars) shall be translated into Dollars at the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency (the “Exchange Rate”), as in effect at 11:00 a.m. (London time) on the date of such Specified Transaction; provided that, if any Indebtedness or Liens are incurred to extend, replace, refund, refinance, renew or defease other Indebtedness or Liens denominated in currencies (other than Dollars) and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding, refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness). No Default or Event of Default shall arise as a result of changes in currency exchange rates occurring after the time any Specified Transaction has been consummated so long as such Specified Transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth above. For purposes of Section 6.11 and the calculation of compliance with any financial ratio for purposes of taking any action hereunder (including for purposes of calculating compliance with the Incremental Cap), on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 4.01(h)), as applicable, for the relevant Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Swap Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness. Any determinations as to the Dollar Equivalent of Revolving Loans or Letters of Credit denominated in an Alternative Currency, the amount of fees owing in respect of Letters of Credit denominated in an Alternative Currency and the amount of the LC Disbursement reimbursement owing to each Issuing Bank under Section 2.05(f) shall be made by the Administrative Agent as of the most recent Revaluation Date and such determination shall be conclusive absent manifest error. The Administrative Agent or any Issuing Bank, as applicable, shall use the Exchange Rate as of each Revaluation Date for the purpose of calculating Dollar Equivalent amounts of the Revolving Loans denominated in an Alternative Currency. Such Exchange Rates shall become effective as of such Revaluation Date and shall be the Exchange Rates employed in converting any amounts between the applicable currencies for such purposes until the next Revaluation Date to occur.

SECTION 1.08 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 1.09 Timing of Payment or Performance.

Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

SECTION 1.10 Certifications.

All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

SECTION 1.11 Compliance with Certain Sections.

Without limiting the reclassification rights described in any Section of Article VI, for purposes of determining compliance with Article VI (other than Section 6.11), in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Affiliate transaction, restrictive agreement, or prepayment of Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions of the same covenant then permitted pursuant to any clause or subsection of such Article VI (other than Sections 6.01(a)(i), 6.01(a)(xx), 6.02(i) and 6.02(xix)), such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses at the time of such transaction or any later time from time to time, in each case, as determined by the Borrower in its sole discretion at such time and thereafter may be reclassified by the Borrower in any manner not expressly prohibited by this Agreement. If any of the baskets set forth in this Agreement are exceeded solely as a result of fluctuations to Consolidated EBITDA for the most recently completed fiscal quarter after the last time such baskets were calculated for any purpose under this Agreement, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations. Each direct or indirect Subsidiary of Holdings that is required to be joined and is joined as a Loan Party pursuant to Section 5.11 shall, until the completion of such joinder, be deemed for the purposes of Article VI of this Agreement to be a Loan Party from and after the Effective Date (or, if later, the date of formation or acquisition of such subsidiary).

## SECTION 1.12 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## ARTICLE II

### THE CREDITS

#### SECTION 2.01 Commitments.

Subject to the terms and conditions set forth herein, (a) each Term Lender severally, and not jointly, agrees to make Term Loans to the Borrower on the Effective Date denominated in Dollars in a principal amount not exceeding such Term Lender's Term Commitment and (b) each Revolving Lender agrees to make Revolving Loans of the applicable Class to the Borrower denominated in Dollars or an Alternative Currency, from time to time during the Revolving Availability Period in an aggregate principal amount which will not result in such Revolving Lender's Revolving Exposure of such Class exceeding such Revolving Lender's Revolving Commitment of such Class (provided, that Revolving Loans funded on the Effective Date shall not exceed \$20,000,000 in the aggregate). Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed (it being understood, however, that prepayments will be taken into account for purposes of the Voluntary Prepayment Amount to the extent provided by Section 2.20).

#### SECTION 2.02 Loans and Borrowings.

(a) Each (i) Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class and (ii) Revolving Loans shall be made by the Revolving Lenders ratably in accordance with their respective Revolving Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.14, each Revolving Borrowing and Term Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as ABR Borrowings unless the Borrower shall have given the notice required for a Eurodollar Borrowing under Section 2.03 and, to the extent requested by the Administrative Agent, provided an indemnity letter extending the benefits of Section 2.16 to Lenders in respect of such



Borrowings. Revolving Loans may be ABR Loans or Eurodollar Loans. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurodollar Borrowing that results from a continuation of one or more outstanding Eurodollar Borrowings may be in an aggregate amount that is equal to such outstanding Borrowings. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of eight Eurodollar Borrowings outstanding *plus* an additional two Eurodollar Borrowings for each outstanding Incremental Facility. Notwithstanding anything to the contrary herein, a Revolving Borrowing of the applicable Class may be in an aggregate amount equal to the entire unused balance of the aggregate Revolving Commitments of such Class or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(f).

#### SECTION 2.03 Requests for Borrowings.

To request a Revolving Borrowing or Term Borrowing, the Borrower shall notify the Administrative Agent of such request by email or facsimile to the Administrative Agent of a written Borrowing Request signed by the Borrower substantially in the form of Exhibit C-1 (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing (or, in the case of any Eurodollar Borrowing to be made on the Effective Date, the same Business Day) or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day prior to the date of the proposed Borrowing, or, in each case, such later time as is acceptable to the Administrative Agent. Each such written Borrowing Request shall specify the following information:

- (i) whether the requested Borrowing is to be a Revolving Borrowing or a Term Borrowing (specifying the Class thereof);
- (ii) the aggregate amount of such Borrowing and, in the case of Revolving Borrowings, the currency of such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vi) the location and number of the Borrower's account or accounts to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified as to any requested Borrowing in Dollars, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. If no currency for a Revolving Borrowing is specified, the requested Borrowing shall be in Dollars. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

#### SECTION 2.04 Swing Line Loans

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans in Dollars to the Borrower (each such loan, a "Swing Line Loan"), from time to time on any Business Day during the Revolving Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage or other applicable share provided for under this Agreement of the Outstanding Amount of Revolving Loans and LC Exposure of the Revolving Lender acting as Swing Line Lender, may exceed the amount of such Swing Line Lender's Revolving Commitment; *provided* that, after giving effect to any Swing Line Loan, (i) the aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitment, then in effect and (ii) the aggregate principal amount of all Swing Line Loans outstanding shall not exceed the Swing Line Sublimit; *provided, further*, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.11, and re-borrow under this Section 2.04 without premium or penalty. Each Swing Line Loan shall be an ABR Loan. Immediately upon the making of a Swing Line Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Lender's Applicable Percentage or other applicable share provided for under this Agreement times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's delivery to the relevant Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 p.m. on the requested borrowing date (or such later time as is acceptable to the Administrative Agent) and shall specify (i) the amount to be borrowed, which shall be a minimum of \$250,000 (and any amount in excess of \$250,000 shall be an integral multiple of \$100,000) and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, Swing Line Lender will confirm with the Administrative Agent in writing that the Administrative Agent has

also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent in writing of the contents thereof. Unless the Swing Line Lender has received a written notice from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied or waived, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 5:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Revolving Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's Defaulting Lender Fronting Exposure (solely after giving effect to Section 2.22(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by cash collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Applicable Percentage of the outstanding Swing Line Loans.

(c) *Refinancing of Swing Line Loans.* (i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Lender make a ABR Loan in an amount equal to such Revolving Lender's Applicable Percentage or other applicable share provided for under this Agreement of the aggregate principal amount of Swing Line Loans of the Borrower then outstanding. Such request shall be made in writing and delivered prior to 11:00 a.m. on the date of the proposed refinancing to the Administrative Agent and Revolving Lenders (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of ABR Loans, but subject to the unutilized portion of the aggregate Revolving Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Borrowing Request promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage or other applicable share provided for under this Agreement of the amount specified in such Borrowing Request available to the Administrative Agent in same day funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Borrowing Request, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a ABR Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c) (i), the request for ABR Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Lenders fund its risk

participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by the Revolving Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Borrowing Request). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay the applicable Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations.* (i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Lender its Applicable Percentage or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 9.08 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Lender shall pay to the Swing Line Lender its Applicable Percentage or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(e) *Interest for Account of Swing Line Lender.* The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Lender funds its ABR Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

#### SECTION 2.05 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein (including Section 2.22), each Issuing Bank agrees, in reliance upon the agreements of the Revolving Lenders and the Borrower set forth in this Section 2.05 and elsewhere in the Loan Documents, to issue Letters of Credit denominated in Dollars or any Alternative Currency for the Borrower's own account (or for the account of any Subsidiary so long as the Borrower is an obligor in respect of all Loan Document Obligations arising under or in respect of such Letter of Credit), in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, which shall reflect the standard operating procedures of such Issuing Bank, at any time and from time to time during the period from the Effective Date until the date that is the fifth (5th) Business Day prior to the Revolving Maturity Date; provided that (x) no Issuing Bank shall be required to issue any trade or commercial letters of credit hereunder and (y) no Issuing Bank shall be required to issue any Letter of Credit if after giving effect thereto the LC Exposure with respect to all Letters of Credit issued by such Issuing Bank would exceed the amount set forth across from its name on Schedule 2.05 (or in the documents pursuant to which such Issuing Bank became an Issuing Bank). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Issuance, Amendment, Renewal or Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall deliver in writing by facsimile, or transmit by electronic communication, to the applicable Issuing Bank and the Administrative Agent (by 12:00 p.m. at least three (3) Business Days before the requested date of issuance, amendment, renewal or extension (or, in the case of any such request to be made on the Effective Date, one (1) Business Day) or such shorter period as the applicable Issuing Bank and the Administrative Agent may agree) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment, renewal or extension, as the case may be (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (d) of this Section 2.05), the amount

and currency of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend, as the case may be, such Letter of Credit. Each such notice shall be in the form of Exhibit Q, appropriately completed (each, a “Letter of Credit Request”). If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment, renewal or extension of any Letter of Credit the Borrower shall be deemed to, with respect to clauses (ii) and (iii), represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) subject to Section 9.04(b)(ii), the Applicable Fronting Exposure of each Issuing Bank shall not exceed its Fronting Exposure Cap, (ii) the aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitments then in effect and (iii) the aggregate LC Exposure shall not exceed the Letter of Credit Sublimit. Letters of Credit will be available to be issued up to an aggregate face amount not to exceed the Letter of Credit Sublimit. No Issuing Bank shall be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Authority or arbitrator shall enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any Requirements of 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 the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise fully compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank now or hereafter in effect and applicable to letters of credit generally, (iii) [reserved], (iv) except as otherwise agreed by the Administrative Agent and such Issuing Bank, the Letter of Credit is in an initial stated amount less than \$100,000, or (v) any Lender is at that time a Defaulting Lender, if after giving effect to Section 2.22(a)(iv), any Defaulting Lender Fronting Exposure remains outstanding, unless such Issuing Bank has entered into arrangements, including the delivery of cash collateral, reasonably satisfactory to such Issuing Bank with the Borrower or such Lender to eliminate such Issuing Bank’s Defaulting Lender Fronting Exposure arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other LC Exposure as to which such Issuing Bank has Defaulting Lender Fronting Exposure. No Issuing Bank shall be under any obligation (i) to amend or extend any Letter of Credit if (x) 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 (y) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit or (ii) to issue any Letter of Credit if such Letter of Credit contains any provisions for automatic reinstatement of all or any portion of the stated amount thereof after any drawing thereunder or after the expiry date of such Letter of Credit (provided that any Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods as provided in Section 2.05(d)).

(c) Notice. Each Issuing Bank agrees that, upon any issuance, amendment, renewal or extension of a Letter of Credit, it shall have given to the Administrative Agent written notice thereof required under paragraph (m)(ii) of this Section 2.05.

(d) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date that is one year after the date of the issuance of such Letter of Credit (or, in the case of any extension thereof, the date to which it has been extended (not in excess of one year from the last applicable expiry date)) or such later date as agreed to by the applicable Issuing Bank in its sole discretion and (ii) the date that is five (5) Business Days prior to the Revolving Maturity Date; provided that if such expiry date is not a Business Day, such Letter of Credit shall expire at or prior to the close of business on the next succeeding Business Day; provided, further, that any Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed or extended automatically for additional consecutive periods of one year or less (but not beyond the date that is five (5) Business Days prior to the Revolving Maturity Date) unless the applicable Issuing Bank notifies the beneficiary thereof within the time period specified in such Letter of Credit or, if no such time period is specified, at least thirty (30) days prior to the then-applicable expiration date, that such Letter of Credit will not be renewed or extended; provided, further, that such Letter of Credit shall not be required to expire on such fifth (5th) Business Day prior to the Revolving Maturity Date if such Letter of Credit is cash collateralized or backstopped in an amount, by an institution and otherwise pursuant to arrangements, in each case reasonably acceptable to the applicable Issuing Bank. For the avoidance of doubt, if the Revolving Maturity Date occurs prior to the expiration of any Letter of Credit as a result of the last proviso in the foregoing sentence, then upon the taking of actions described in such proviso with respect to such Letter of Credit, all participations in such Letter of Credit under the terminated Revolving Commitments shall terminate.

(e) Participations. Immediately upon the issuance of each Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank that is the issuer thereof or the Lenders, each Revolving Lender shall be deemed to have purchased and the applicable Issuing Bank shall be deemed to have sold a participation in such Letter of Credit equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Revolving Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (f) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower for any reason. All fundings of such participations shall be denominated in Dollars or, if applicable, the Dollar Equivalent of the relevant amount of such Letter of Credit. Each Revolving Lender acknowledges and agrees that its acquisition of participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or any reduction or termination of the Revolving Commitments, and that each payment required to be made by it under the preceding sentence shall be made without any offset, abatement, withholding or reduction whatsoever.

(f) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount (in same day funds) equal to such LC Disbursement not

later than 4:00 p.m., New York City time, on the Business Day immediately following the Business Day that the Borrower receives written notice (including via e-mail) of such LC Disbursement (the “Reimbursement Date”), together with accrued interest or fees thereon in accordance with clause (i) of this Section 2.05. Anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and the applicable Issuing Bank prior to 2:00 p.m., New York City time, on the Reimbursement Date that the Borrower intends to reimburse the applicable Issuing Bank for the amount of the LC Disbursement (including any accrued interest or fees thereon) with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Borrowing Request to the Administrative Agent requesting Revolving Lenders to make Revolving Loans that are ABR Revolving Loans on the Reimbursement Date in an amount equal to such LC Disbursement (together with any accrued interest or fees thereon), and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Revolving Lenders shall, on the Reimbursement Date, make Revolving Loans that are ABR Revolving Loans in an amount equal to their Applicable Percentage of such LC Disbursement (together with any accrued interest or fees thereon), the proceeds of which shall be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for the amount of such LC Disbursement (together with any accrued interest or fees thereon); provided that if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Bank on the Reimbursement Date in an amount equal to such LC Disbursement (together with any accrued interest or fees thereon), the Borrower shall reimburse the applicable Issuing Bank, on demand, in an amount in same day funds equal to the excess of such LC Disbursement (together with any accrued interest or fees thereon) over the aggregate amount of such Revolving Loans, if any, which are so received. The Revolving Loans made pursuant to this paragraph (f) shall be made without regard to the Borrowing Minimum.

(g) Obligations Absolute. The Borrower’s obligation to reimburse LC Disbursements as provided in paragraph (f) of this Section 2.05 is absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, this Agreement or any other Loan Document, or any term or provision herein or therein, (ii) any exchange, change, waiver or release of any Collateral for, or any other Person’s guarantee or of other liability for, any of the Secured Obligations, (iii) the existence of any claim, set-off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the applicable Issuing Bank, any Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one or more of its Subsidiaries and the beneficiary for which any Letter of Credit was procured), (iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (v) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit (provided that the Borrower shall not be obligated to reimburse such LC Disbursements unless payment is made against presentation of a draft or other document that at least substantially complies with the terms of such Letter of Credit), (vi) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of



Holdings or any of its Subsidiaries; (vii) any breach hereof or any other Loan Document by any party hereto or thereto, (viii) the fact that an Event of Default or a Default shall have occurred and be continuing or (ix) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. As between the Borrower and any Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by such Issuing Bank and the proceeds thereof, by the respective beneficiaries of such Letters of Credit or any assignees or transferees thereof. In furtherance and not in limitation of the foregoing, none of the Administrative Agent, the Lenders, the Issuing Banks or any of their Related Parties shall have any liability or responsibility for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged other than to confirm such documents comply with the terms of such Letter of Credit; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) its honor of any presentation under a Letter of Credit that appears on its face to substantially comply with the terms and conditions of such Letter of Credit; (v) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder); (vi) errors in interpretation of technical terms; (vii) any loss or delay in the transmission of any document required in order to make a drawing under any such Letter of Credit; (viii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (ix) any consequences arising from causes beyond the control of the applicable Issuing Bank, including any act by a Governmental Authority and fluctuation in currency exchange rates. None of the above shall affect or impair, or prevent the vesting of, any of the applicable Issuing Bank's rights or powers hereunder or place any Issuing Bank under any liability to the Borrower or any other Person. Notwithstanding the foregoing, none of the above shall be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential, incidental, exemplary or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Requirements of Law) suffered by the Borrower that are caused by such Issuing Bank's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, nonappealable judgment) when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if (notwithstanding the appearance of substantial compliance) such documents are not in strict compliance with the terms of such Letter of Credit, and any such acceptance or refusal shall be deemed not to constitute gross negligence or willful misconduct.

(h) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify the Administrative Agent and the Borrower in writing delivered by facsimile of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligations to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement in accordance with paragraph (f) of this Section 2.05.

(i) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (f) of this Section 2.05, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be paid to the Administrative Agent, for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (f) of this Section 2.05 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment and shall be payable on demand or, if no demand has been made, on the date on which the Borrower reimburses the applicable LC Disbursement in full.

(j) Cash Collateralization. If (i) effective immediately, without demand or other notice of any kind, as of any expiration date of a Letter of Credit, such Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, (ii) effective immediately, without demand or other notice of any kind, as of the occurrence and during the continuance of any Event of Default under paragraph (h) or (i) of Section 7.01, or (iii) any Event of Default under paragraph (a) or (b) of Section 7.01 shall occur and be continuing, on the Business Day on which the Borrower receives notice from the Administrative Agent, the applicable Issuing Bank or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing more than 50% of the aggregate LC Exposure of all Revolving Lenders) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Secured Parties, an amount of cash in Dollars, equal to the portions of the LC Exposure attributable to Letters of Credit, as of such date plus any accrued and unpaid interest and fees thereon. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement and the other Loan Documents. At any time that there shall exist a Defaulting Lender, if any Defaulting Lender Fronting Exposure remains outstanding (after giving effect to Section 2.22(a)(iv)), then promptly upon the request of the Administrative Agent, the Swing Line Lender or any Issuing Bank, the Borrower shall deliver to the Administrative Agent cash collateral in an amount sufficient to cover such Defaulting Lender Fronting Exposure (after giving effect to any cash collateral provided by the Defaulting Lender). The Administrative Agent (for the benefit of the Secured Parties) shall have

exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent in Permitted Investments and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Notwithstanding anything to the contrary set forth in this Agreement, moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Banks for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, the balance shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing more than 50% of the aggregate LC Exposure of all the Revolving Lenders), such balance shall be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default or the existence of a Defaulting Lender, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived or after the termination of Defaulting Lender status, as applicable. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.11(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with Section 2.11(b) and no Event of Default shall have occurred and be continuing.

(k) Designation of Additional Issuing Banks. The Borrower may, at any time and from time to time, designate as additional Issuing Banks one or more Revolving Lenders that agree (in such Revolving Lender's sole discretion) in writing to serve in such capacity as provided below. The acceptance by a Revolving Lender of an appointment as an Issuing Bank hereunder shall be evidenced by an agreement, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, executed by the Borrower, the Administrative Agent and such designated Revolving Lender and, from and after the effective date of such agreement, (i) such Revolving Lender shall have all the rights and obligations of an Issuing Bank under this Agreement and (ii) references herein to the term "Issuing Bank" shall be deemed to include such Revolving Lender in its capacity as an issuer of Letters of Credit hereunder.

(l) Resignation or Termination of an Issuing Bank. Subject to the appointment and acceptance of a successor Issuing Bank reasonably acceptable to the Borrower, any Issuing Bank may resign at any time by giving thirty (30) days' written notice to the Administrative Agent, the Lenders and the Borrower. The Borrower may terminate the appointment of any Issuing Bank as an "Issuing Bank" hereunder by providing a written notice thereof to such Issuing Bank, with a copy to the Administrative Agent. Any such termination shall become effective upon the earlier of (i) such Issuing Bank's acknowledging receipt of such notice and (ii) the fifth Business Day following the date of the delivery thereof; provided that no such termination shall become effective until and unless the LC Exposure attributable to all Letters of Credit issued by such Issuing Bank (or its Affiliates) shall have been reduced to zero. At the time any such resignation or termination shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the resigning or terminated Issuing Bank pursuant to

Section 2.12(b). Notwithstanding the effectiveness of any such resignation or termination, the resigning or terminated Issuing Bank shall remain a party hereto and shall continue to have all the rights of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or termination, but shall not (a) be required (and shall be discharged from its obligations) to issue any additional Letters of Credit or extend or increase the amount of Letters of Credit then outstanding, without affecting its rights and obligations with respect to Letters of Credit previously issued by it, or (b) be deemed an Issuing Bank for any other purpose.

(m) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section 2.05, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) within five (5) Business Days following the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and face amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which a Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and amount of such LC Disbursement and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank; provided that no Issuing Bank shall have any liability hereunder to any Person for any failure to deliver the reports contemplated by this paragraph (m) of Section 2.05.

(n) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a Letter of Credit is issued or when it is amended with the consent of the beneficiary thereof the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the applicable Issuing Bank shall not be responsible to the Borrower for, and the applicable Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the applicable Issuing Bank required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the applicable law or any order of any Governmental Authority in a jurisdiction where the applicable Issuing Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade (BAFT), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

## SECTION 2.06 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the Applicable Account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(f) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.06 and may, in reliance on such assumption and in its sole discretion, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender agrees to pay to the Administrative Agent an amount equal to such share on demand of the Administrative Agent. If such Lender does not pay such corresponding amount forthwith upon demand of the Administrative Agent therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower agrees to pay such corresponding amount to the Administrative Agent forthwith on demand. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing in accordance with Section 2.13. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

(c) The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.03(c).

## SECTION 2.07 Interest Elections.

(a) Each Revolving Borrowing of the applicable Class and each Term Borrowing of the applicable Class initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest

Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by facsimile or other electronic transmission of a written Interest Election Request signed by the Borrower, by the time that a Borrowing Request for Revolving Loans would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(c) Each written Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section 2.07, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing of one (1) month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing in excess of one (1) month.

## SECTION 2.08 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Term Commitments shall automatically terminate and be permanently reduced to zero upon funding of the Term Loans on the Effective Date and (ii) the Revolving Commitments shall terminate on the Revolving Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class without premium or penalty (subject to Section 2.16), provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$500,000 and not less than \$500,000 unless such amount represents all of the remaining Commitments of such Class, (ii) the Borrower shall not terminate or reduce the Revolving Commitments of any Class if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the aggregate Revolving Exposures of such Class would exceed the aggregate Revolving Commitments then in effect for such Class, and (iii) if, after giving effect to any reduction of the Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitments, such sublimit shall be automatically reduced by the amount of such excess. Except as provided above, the amount of any such Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.08 at least one (1) Business Day prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of any credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of termination) if such condition is not satisfied. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.08. Any termination or reduction of the Commitments of any Class shall be permanent (provided, that that termination or reduction of Revolving Commitments will be taken into account for purposes of the Voluntary Prepayment Amount to the extent provided by Section 2.20). Each reduction of (x) the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class and (y) the Revolving Commitments shall be made to any Class of Revolving Commitment as directed by the Borrower (including to any Class of existing or extended Revolving Commitments).

## SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date and (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10.

(b) The Borrower shall repay the aggregate principal amount of its Swing Line Loans on the Revolving Maturity Date.

(c) Each Lender shall maintain in accordance with its usual practice accounts or records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder and the amount of any the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans.

(d) The Administrative Agent shall, in connection with the maintenance of the Register in accordance with Section 9.04(b)(iv), maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. 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.

(e) The entries made in the accounts maintained pursuant to paragraph (c) of this Section 2.09 shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement.

(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a Note. In such event, the Borrower shall execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns).

## SECTION 2.10 Amortization of Term Loans.

(a) Subject to adjustment pursuant to paragraph (c) of this Section 2.10, the Borrower shall repay Initial Term Loans on the last day of each March, June, September and December (commencing on the last day of the first full fiscal quarter following the Effective Date) in the principal amount of Term Loans as follows; provided that if any such date is not a Business Day, such payment shall be due on the next preceding Business Day:

<u>Payment Date</u>	<u>Amortization Payment</u>
The last day of each fiscal quarter starting with the fiscal quarter ended September 30, 2017 and ending with the fiscal quarter ended June 30, 2018.	\$ 1,312,500.00
The last day of each fiscal quarter starting with the fiscal quarter ended September 30, 2018 and ending with the fiscal quarter most recently ended prior to the Term Maturity Date.	\$ 1,602,904.04



(b) To the extent not previously paid, all Term Loans shall be due and payable on the Term Maturity Date.

(c) Any prepayment of a Term Borrowing of any Class (i) pursuant to Section 2.11(a) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10 as directed by the Borrower (and absent such direction in direct order of maturity; provided that, in the absence of such direction by the Borrower as described in the preceding clause, the Administrative Agent shall make such direction in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16) and (ii) pursuant to Section 2.11(c) or 2.11(d) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Term Borrowings of such Class to be made pursuant to this Section 2.10, or, in each case except as otherwise provided in any Incremental Amendment, Refinancing Amendment or Loan Modification Agreement, pursuant to the corresponding section of such Incremental Amendment, Refinancing Amendment or Loan Modification Agreement, as applicable, as directed by the Borrower and, in the absence of such direction, in direct order of maturity (including any Incremental Facility).

(d) Prior to any prepayment of any Term Borrowings of any Class hereunder pursuant to Section 2.11(a), 2.11(c) or 2.11(d), the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Administrative Agent in writing by facsimile or other electronic transmission of such election not later than 2:00 p.m., New York City time, one (1) Business Day before the scheduled date of such repayment. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

## SECTION 2.11 Prepayment of Loans.

(a) (i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty; provided that in the event that, on or prior to the six month anniversary of the Amendment No. 2 Effective Date, the Borrower (x) makes any prepayment of Initial Term Loans in connection with any Repricing Transaction or (y) effects any amendment of this Agreement resulting in a Repricing Transaction or (z) makes a mandatory prepayment of Initial Term Loans pursuant to Section 2.11(c) in connection with a Prepayment Event described in clause (b) of the definition of “Prepayment Event” resulting in a Repricing Transaction, in either case, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders holding Initial Term Loans, (I) a prepayment premium of 1.00% of the principal amount of the Initial Term Loans being prepaid in connection with such Repricing Transaction and (II) in the case of clause (y), an amount equal to 1.00% of the aggregate amount of the applicable Initial Term Loans outstanding immediately prior to such amendment that are subject to an effective pricing reduction pursuant to such amendment.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 p.m., New York City time, on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$250,000 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. If such notice is given by the Borrower, unless rescinded, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything in any Loan Document to the contrary, so long as no Event of Default has occurred and is continuing, Holdings, the Borrower or any of their respective Subsidiaries may offer to prepay all or a portion of the outstanding Class of any Term Loans on the following basis:

(A) Holdings, the Borrower or any of their respective Subsidiaries shall have the right to make a voluntary prepayment of Term Loans at a discount to par (such prepayment, the “Discounted Term Loan Prepayment”) pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers, in each case made in accordance with this Section 2.11(a)(iii); provided that (x) Holdings, the Borrower or any of their respective Subsidiaries shall not make any Borrowing of Revolving Loans or Swing Line Loans to fund any Discounted Term Loan Prepayment and (y) Holdings, the Borrower or any of their respective Subsidiaries shall not initiate any action under this Section 2.11(a)(iii) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by Holdings, the Borrower or any of their respective

Subsidiaries on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date Holdings, the Borrower or any of their respective Subsidiaries were notified that no Term Lender was willing to accept any prepayment of any Term Loan and/or Other Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of Holdings', the Borrower's or any of their respective Subsidiaries' election not to accept any Solicited Discounted Prepayment Offers and (z) each Lender participating in any Discounted Term Loan Prepayment acknowledges and agrees that in connection with such Discounted Term Loan Prepayment, (1) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to participate in such Discounted Term Loan Prepayment ("Excluded Information"), (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to participate in such Discounted Term Loan Prepayment notwithstanding such Lender's lack of knowledge of the Excluded Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; provided, further, that any Term Loan that is prepaid will be automatically and irrevocably cancelled.

(B) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with three (3) Business Days' notice in the form of a Specified Discount Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche 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 tranche, the tranche or tranches 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 and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 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 relevant Term 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 City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “Specified Discount Prepayment Response Date”).

(2) Each relevant 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 relevant then outstanding Term Loans at the Specified Discount and, if so (such accepting Term Lender, a “Discount Prepayment Accepting Lender”), the amount and the tranches 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, Holdings, the Borrower or any of their respective Subsidiaries will make prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2); 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries 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 tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches 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, tranche 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by Holdings, the Borrower or any of their respective Subsidiaries on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with three (3) Business Days' notice in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "Discount Range Prepayment Amount"), the tranche or tranches 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 tranche of Term Loans willing to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the Borrower or any of their respective Subsidiaries shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 relevant Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the "Discount Range Prepayment Response Date"). Each relevant 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 Term Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender's Term Loans (the "Submitted Amount") such 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 Holdings, the Borrower or any of their respective Subsidiaries 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). Holdings, the Borrower or any of their respective Subsidiaries agree 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 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 Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, Holdings, the Borrower or any of their respective Subsidiaries will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of

their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Lender to be prepaid at the Applicable Discount on such date, and (z) 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by the Borrower on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with three (3) Business Days’ notice in the form of a Solicited Discounted Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the “Solicited Discounted Prepayment Amount”) and the tranche or tranches of Term Loans, Holdings, the Borrower or any of their respective Subsidiaries is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the Borrower or any of their respective Subsidiaries shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 Term Lender to the Auction Agent (or its delegate)

by no later than 5:00 p.m., New York City time on the third Business Day after the date of delivery of such notice to the relevant 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”) such Term Lender is willing to allow to be applied to the prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the “Offered Amount”) such Term Lender is willing to have prepaid subject to such 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 Holdings, the Borrower or any of their respective Subsidiaries with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Holdings, the Borrower or any of their respective Subsidiaries shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to Holdings, the Borrower or any of their respective Subsidiaries (the “Acceptable Discount”), if any. If Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries 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”), Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries by the Acceptance Date, Holdings, the Borrower or any of their respective Subsidiaries 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 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 (in consultation with Holdings, the Borrower or any of their respective Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate



principal amount and the tranches of Term Loans (the “Acceptable Prepayment Amount”) to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries at the Acceptable Discount in accordance with this Section 2.11(a)(iii)(D). If Holdings, the Borrower or any of their respective Subsidiaries elects to accept any Acceptable Discount, then Holdings, the Borrower or any of their respective Subsidiaries agrees to accept all Solicited Discounted Prepayment Offers received by 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 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”). Holdings, the Borrower or any of their respective Subsidiaries will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender who made a Solicited Discounted Prepayment Offer of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches 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 the Borrower and Lenders shall be conclusive and binding for

all purposes absent manifest error. The payment amount specified in such notice to the Borrower shall be due and payable by the Borrower 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, Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of reasonable and customary fees and expenses from Holdings, the Borrower or any of their respective Subsidiaries in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, Holdings, the Borrower or any of their respective Subsidiaries shall prepay such Term Loans on the Discounted Prepayment Effective Date. Holdings, the Borrower or any of their respective Subsidiaries shall make such prepayment to the Auction 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 2:00 p.m. New York City time on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining principal installments of the relevant tranche of Term Loans as directed by the Borrower. 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 2.11(a)(iii) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable. The aggregate principal amount of the tranches and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches 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 2.11(a)(iii), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by Holdings, the Borrower or any of their respective Subsidiaries.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.11(a)(iii), 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 Business Day.

(I) Each of Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledges and agrees that the Auction Agent may perform any and all of its duties under this Section 2.11(a)(iii) 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 their respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.11(a)(iii) as well as activities of the Auction Agent.

(J) Holdings, the Borrower or any of their respective Subsidiaries 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, as applicable (and if such offer is revoked pursuant to the preceding clauses, any failure by the Borrower to make any prepayment to a Term Lender, as applicable, pursuant to this Section 2.11(a)(iii) shall not constitute a Default or Event of Default under Section 7.01 or otherwise).

(b) In the event and on each occasion that the aggregate Revolving Exposures exceed the aggregate Revolving Commitments at such time, the Borrower shall prepay Revolving Borrowings and Swing Line Borrowings (or, if no such Borrowings are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j)) in an aggregate amount necessary to eliminate such excess within one (1) Business Day following Borrower's receipt of written notice from the Administrative Agent.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings or its Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five (5) Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term "Prepayment Event", on the date of such Prepayment Event), prepay Initial Term Loans in an aggregate amount equal to (x) the Prepayment Percentage of the amount of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if Holdings, the Borrower or any of the Restricted Subsidiaries invest (or commit to invest) the Net Proceeds from such event (or a portion thereof) within twelve (12) months after receipt of such Net Proceeds in the business of the Borrower and the other Subsidiaries, then no prepayment shall be required pursuant to this paragraph in respect of such Net Proceeds in respect of such event (or the applicable portion of such Net Proceeds, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so invested (or committed to be

invested) by the end of such 12-month period (or if committed to be so invested within such 12-month period, have not been so invested within six months following such 12-month period), at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so invested (or committed to be invested); provided, further, that the Borrower may use a portion of such Net Proceeds to prepay or repurchase any Incremental Term Loans, Other Term Loans or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof with the proceeds of such Prepayment Event, in each case in an amount not to exceed the product of (x) the amount of such Net Proceeds and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness.

(d) Following the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2018, the Borrower shall prepay Initial Term Loans in an aggregate amount equal to the ECF Percentage of Excess Cash Flow for such fiscal year; provided that, at the election of the Borrower, such amount shall be reduced by the aggregate amount of voluntary prepayments and repurchases of (i) Term Loans (and, to the extent the Revolving Commitments are reduced in a corresponding amount pursuant to Section 2.08, Revolving Loans) made pursuant to Section 2.11(a) or otherwise in a manner not prohibited by Section 9.04(g) during such fiscal year or after such fiscal year and prior to the time such prepayment is due (without duplication to subsequent years) as provided below (provided that such reduction as a result of prepayments pursuant to Section 2.11(a)(iii) or repurchases pursuant to Section 9.04(g) shall be limited to the actual amount of such cash prepayment or repurchase), (ii) Incremental Facilities (provided that in the case of the prepayment of any revolving loans, there is a corresponding permanent reduction in commitments), and (iii) other Senior Secured First Lien Indebtedness, (provided that (x) in the case of the prepayment of any revolving loans, there is a corresponding reduction in commitments and (y) the reduction as a result of such prepayments and repurchases shall be limited to the actual amount of such cash prepayment or repurchase) made during such fiscal year or, at the option of the Borrower, after such fiscal year and prior to the time such prepayment is due (without duplication to subsequent years) (excluding in the case of clauses (i), (ii) and (iii) all such prepayments and repurchases funded with the proceeds of other long term Indebtedness). The Borrower may use a portion of such Excess Cash Flow prepayment to prepay or repurchase any Incremental Term Loans, Other Term Loans or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof based on Excess Cash Flow, in each case in an amount not to exceed the product of (x) the amount of such Excess Cash Flow prepayment and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness. Each prepayment of Initial Term Loans pursuant to this paragraph shall be made on or before the date that is ten (10) business days after the date on which financial statements are required to be delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated. Notwithstanding

anything herein to the contrary, no prepayment under this Section 2.11(d) shall be required with respect to any fiscal year to the extent Excess Cash Flow for such fiscal year is less than or equal to \$2,500,000 (and only amounts in excess of \$2,500,000 shall be required to be prepaid).

(e) Prior to any optional prepayment of Borrowings pursuant to Section 2.11(a)(i), the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section 2.11. In the event of any optional prepayment of Revolving Borrowings, the Borrower shall select the Class or Classes of Revolving Borrowings to be prepaid. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement, Incremental Facility Amendment or otherwise herein, in the event of any mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the Borrower shall select Term Borrowings to be prepaid so that the aggregate amount of such prepayment shall be allocated among the Classes of Term Borrowings (and, to the extent provided in the Refinancing Amendment for any Class of Other Term Loans, the Borrowings of such Class) pro rata based on the aggregate principal amount of outstanding Borrowings of each Class; provided that any Term Lender (and, to the extent provided in the Refinancing Amendment or Loan Modification Agreement for any Class of Other Term Loans, any Lender that holds Other Term Loans of such Class) may elect, by notice to the Administrative Agent by facsimile at least two (2) Business Days prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans or Other Term Loans of any such Class pursuant to this Section 2.11 (other than an optional prepayment pursuant to paragraph (a)(i) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans or Other Term Loans of any such Class but was so declined (and not used pursuant to the immediately following sentence) shall be retained by Holdings or its Restricted Subsidiaries (such amounts, "Retained Declined Proceeds"). An amount equal to any portion of a mandatory prepayment of Term Borrowings that is declined by the Lenders under this Section 2.11(e) shall, to the extent not prohibited hereunder or under the documentation governing the Permitted First Priority Refinancing Debt or the Pari Passu Intercreditor Agreement, be applied by the Borrower to prepay, *pari passu* Indebtedness, Second Lien Term Loans or Permitted Junior Priority Refinancing Debt to the extent required by the documentation governing such Indebtedness or be retained to be used for any other purposes not prohibited hereunder. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement, Incremental Facility Amendment or otherwise herein, optional prepayments of Borrowings of Term Loans should be allocated among the Classes of Term Borrowings pro rata based on the aggregate principal amount of outstanding Borrowings of each Class. In the absence of a designation by the Borrower as described in the preceding provisions of this paragraph of the Type of Borrowing of any Class, the Administrative Agent shall make such designation in its reasonable discretion with a view, but no obligation, to minimize breakage costs owing under Section 2.16, provided that, in connection with any mandatory prepayments by the Borrower of the Term Loans pursuant to Section 2.11(c) or (d), such prepayments shall be applied on a pro rata basis to the then outstanding Term Loans being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurodollar Loans.

(f) The Borrower shall notify the Administrative Agent of (x) any optional prepayment pursuant to Section 2.11(a)(i) in writing (by facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day before the date of prepayment and (y) any mandatory prepayment pursuant to Section 2.11(c) in writing (by facsimile or other electronic communication) of any payment hereunder no later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of prepayment may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13, and subject to Section 2.11(a)(i) and Section 2.16, shall be without premium or penalty. At the Borrower's election in connection with any prepayment pursuant to this Section 2.11, such prepayment shall not be applied to any Term Loan or Revolving Loan of a Defaulting Lender (under any of subclauses (a), (b) or (c) of the definition of "Defaulting Lender") and shall be allocated ratably among the relevant non-Defaulting Lenders.

(g) Notwithstanding any other provisions of Section 2.11(c) or (d), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event by a Subsidiary of Holdings that is organized or incorporated under the laws of a jurisdiction other than the United States, any state, commonwealth or territory thereof or the District of Columbia, giving rise to a prepayment pursuant to Section 2.11(c) or (d) (a "Restricted Prepayment Event") or Excess Cash Flow are prohibited or delayed by applicable local law (including financial assistance, corporate benefit, restrictions on repatriating or upstreaming of cash intra-group and the fiduciary and statutory duties of the directors of the relevant subsidiaries) from being repatriated to the Borrower, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or (d), as the case may be, and such amounts may be retained by such Subsidiary, (B) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would have an adverse (other than de minimis) tax consequence to any Loan Party, Subsidiary or, to the extent pass-through entities, any direct or indirect equity holder thereof with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be

applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary, (C) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would violate any material organizational document restrictions (as a result of minority ownership) and restrictions in other material agreements (to the extent not in violation of Section 6.09), the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary and (D) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow could reasonably give rise to a risk of liability for the directors of such Subsidiary under applicable local law, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(c) or Section 2.11(d), as the case may be, and such amounts may be retained by such Subsidiary; provided that (i) Holdings, the Borrower and each Restricted Subsidiary hereby agrees to use commercially reasonable efforts (as determined in the Borrower's reasonable business judgment) to overcome or eliminate any such restrictions on repatriation even if the Borrower does not intend to actually repatriate such cash, so that an amount equal to the full amount of such Net Proceeds will otherwise be subject to repayment under this Section 2.11, and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event could reasonably be expected to have adverse Tax consequences (other than de minimis consequences) for Holdings, the Borrower or any Restricted Subsidiary with respect to such Net Proceeds, an amount equal to such Net Proceeds that would be so affected will not be subject to repayment under this Section 2.11 and such amounts shall be available for general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with this Section 2.11. For the avoidance of doubt, Borrower shall be permitted to make any repayments required by Section 2.11(c) or Section 2.11(d) from any source of funds and shall not be required to make any repayments from funds contained in any particular Loan Party. The non-application of any such prepayment amounts as a result of the foregoing provisions will not constitute a Default or Event of Default and such amounts shall be available for working capital and general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with such provisions. Notwithstanding the foregoing, any payments actually made by the Loan Parties shall be applied net of an amount equal to the additional Taxes of Holdings, its Subsidiaries and the direct and indirect holders of Equity Interests in Holdings that would be payable or reserved against and any additional costs that would be incurred as a result of a repatriation, whether or not a repatriation actually occurs.

#### SECTION 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent in Dollars for the account of each Revolving Lender (other than a Defaulting Lender) a commitment fee, which shall accrue at the rate of the Commitment Fee Percentage per annum on the daily average unused amount of the Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments

terminate. Accrued commitment fees shall be payable in arrears on the last Business Day of March, June, September and December of each year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender; provided that, for purposes of this Section 2.12(a), Swing Line Obligations of a Lender shall not be treated as a utilization of the Revolving Commitment of such Lender.

(b) The Borrower agrees to pay (i) to the Administrative Agent in Dollars for the account of each Revolving Lender (other than any Defaulting Lender) a participation fee with respect to its participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements but taking into account the maximum amount available to be drawn under all outstanding Letters of Credit, whether or not such maximum amount is then in effect) during the period from and including the Effective Date to and including the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank in Dollars a fronting fee (which fee shall be calculated by the Administrative Agent in consultation with the applicable Issuing Bank and payable directly to the applicable Issuing Bank), which shall accrue at a rate of 0.125% per annum on the daily amount of the LC Exposure attributable to Letters of Credit issued by such Issuing Bank (excluding any portion thereof attributable to unreimbursed LC Disbursements but taking into account the maximum amount available to be drawn under all outstanding Letters of Credit, whether or not such maximum amount is then in effect) during the period from and including the Effective Date to and including the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the last Business Day of March, June, September and December, respectively, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after written demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between the Borrower and the Administrative Agent.

(d) [Reserved].



(e) Notwithstanding the foregoing, and subject to Section 2.22, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 2.12.

SECTION 2.13 Interest.

(a) (i) The Loans comprising each ABR Borrowing (other than Swing Line Borrowings) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(ii) Each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternate Base Rate plus the Applicable Rate for Revolving Loans.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate, in each case for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if upon the occurrence and during the continuance of any payment Event of Default, any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall be payable pursuant to this Section 2.13(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender; provided, further that no amounts shall accrue pursuant to this Section 2.13(c) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments, provided that (i) interest accrued pursuant to paragraph (c) of this Section 2.13 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to clause (a) of the definition of Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(f) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a) or (b) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14 have not arisen but the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor (acting reasonably) to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

#### SECTION 2.14 Alternate Rate of Interest.

If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans");

(c) the Administrative Agent shall give notice thereof to the Borrower and the Lenders by facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, in the event any Loans are so affected, (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, then such Borrowing shall be made as an ABR Borrowing; provided, however, that, in each case, the Borrower may revoke any Borrowing Request that is pending when such notice is received.

(d) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a) of this Section 2.14 and/or is advised by the Required Lenders of their determination in accordance with clause (b) of this Section 2.14 and the Borrower shall so request, the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend the definition of "LIBO Rate" and other applicable provisions to preserve the original intent thereof in light of such change; provided that, until so amended, such Impacted Loans will be handled as otherwise provided pursuant to the terms of this Section 2.14.

#### SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Excluded Taxes and Indemnified Taxes) affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender or Issuing Bank, the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank, as the case may be, for such increased costs actually incurred or reduction actually suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then, from time to time upon request of such Lender or Issuing Bank, the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction actually suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section 2.15 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

#### SECTION 2.16 Break Funding Payments.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(c), then, in any such event, the Borrower shall, after receipt of a written request by any Lender affected by any such event (which request shall set forth in reasonable detail the basis for requesting such amount), compensate each Lender for the loss, cost and expense (excluding loss of profit) actually incurred by it as a result of such event. For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 2.16, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Adjusted LIBO Rate for such Loan by a matching deposit or other borrowing in the applicable interbank eurodollar market, for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 and the reasons therefor delivered to the Borrower shall be prima facie evidence of such amounts. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after receipt of such demand; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.16 for any loss, cost or expense more than 180 days prior to the date that such Lender delivers such certificate. Notwithstanding the foregoing, this Section 2.16 will not apply to losses, costs or expenses resulting from Taxes, as to which Section 2.17 shall govern. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.16 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities.

## SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If the applicable withholding agent (including, for the avoidance of doubt, the Administrative Agent or any Loan Party) shall be required by applicable Requirements of Law (as determined in the good faith discretion of the applicable withholding agent) to deduct any Taxes from such payments, then the applicable withholding agent shall make such deductions and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law, and if such Taxes are Indemnified Taxes, then the amount payable by the applicable Loan Party shall be increased as necessary so that after all such required deductions have been made (including such deductions and withholdings applicable to additional amounts payable under this Section 2.17), each Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay, or, at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender within thirty (30) days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party under any Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, that the Borrower shall not be obligated to make payment to the Administrative Agent or a Lender, as the case may be, for penalties, interest or expenses attributable to the gross negligence or willful misconduct of the Administrative Agent or such Lender, as applicable, as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) To the extent required by any applicable Requirements of Law (as determined in good faith by the Administrative Agent), the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax

from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered 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), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Loan Parties for such Taxes pursuant to this Section 2.17 and without limiting any obligation of the Loan Parties to do so pursuant to this Section 2.17) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses, and any other out-of-pocket expenses, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 2.17(d). The agreements in this Section 2.17(d) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, any assignment of rights by a Loan Party, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations under any Loan Document.

(e) As soon as practicable after any payment of any Taxes by a Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Each Lender shall, at such times as are reasonably requested by Borrower or the Administrative Agent, (i) complete any documentation required for the Borrower or the Administrative Agent, as applicable, to obtain clearance to make payments under the Loan Documents without, or with a reduction in, any withholding Tax and to determine whether or not such Lender is subject to backup withholding or information reporting requirements and (ii) provide the Borrower and the Administrative Agent with any properly completed and executed documentation prescribed by any Requirement of Law, 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, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation expired, obsolete or inaccurate in any respect (including any specific documentation required below in this Section 2.17(f)), deliver promptly to Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to Tax at a rate reduced by an applicable Tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate.

Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and submission of such documentation (other than such documentation set forth in this Section 2.17(f)(i), (ii)(A) through (D), and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the generality of the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) 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 reasonable request of the Borrower or the Administrative Agent) two properly completed and duly signed copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is a 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 reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) 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, (x) two properly completed and duly signed certificates, substantially in the form of Exhibit N-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (any such certificate a "United States Tax Compliance Certificate"), and (y) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two properly completed and duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit N-2 or Exhibit N-3, Internal

Revenue Service Form W-9, Internal Revenue Service Form W-8IMY (or other successor forms) and/or any other required information from each beneficial owner that would be required under this Section 2.17 if such beneficial owner were a Lender, as applicable (provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, a United States Tax Compliance Certificate substantially in the form of Exhibit N-4 may be provided by such Foreign Lender on behalf of each such direct or indirect partner), or

(E) two properly completed and duly signed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to any Lender under any Loan Document would be subject to withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding any other provision of this clause (f), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(g) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded hereunder, the Administrative Agent or the relevant Lender, as applicable, shall use commercially reasonable efforts to cooperate with the Borrower in a reasonable challenge of such Taxes if so requested by the Borrower, provided that (a) the Administrative Agent or such Lender determines in its reasonable discretion that it would not be subject to any unreimbursed third party cost or expense or otherwise be prejudiced by cooperating in such challenge, (b) the Borrower pays all related expenses of the Administrative Agent or such Lender, as applicable and (c) the Borrower indemnifies the Administrative Agent or such Lender, as applicable, for any liabilities or other costs incurred by such party in connection with such challenge. If the Administrative Agent or a Lender receives a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it



shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to promptly repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. The Administrative Agent or such Lender, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (provided that the Administrative Agent or such Lender may delete any information therein that the Administrative Agent or such Lender deems confidential). Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Notwithstanding anything to the contrary, this Section 2.17(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to Taxes which it deems confidential) to any Loan Party or any other person. Notwithstanding anything herein to the contrary, the Borrower shall not be required to compensate such Lender for any amount incurred under this Section 2.17 more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such one hundred and eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof.

(h) The agreements in this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(i) For purposes of this Section 2.17, the term "Lender" shall include any Issuing Bank and the term "applicable Requirements of Law" includes FATCA.

#### SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) at or prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time, on the date when due), in immediately available funds, without condition or deduction for any counterclaim,

recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made in Dollars (provided that any payment with respect to any Loan denominated in an Alternative Currency shall be made in such Alternative Currency) to such account as may be specified by the Administrative Agent. Payments to be made directly to any Issuing Bank shall be made as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as otherwise provided herein, if any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements and Swing Line Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements and Swing Line Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) any payment

obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements and Swing Line Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans or Revolving Commitments of that Class or any increase in the Applicable Rate in respect of Loans of Lenders that have consented to any such extension. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower's rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders or Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(e), Section 2.05(f), Section 2.06(a), Section 2.06(b), Section 2.18(d) or Section 9.03(c), then the Administrative Agent may, in its discretion and in the order determined by the Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

#### SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or any event gives rise to the operation of Section 2.23, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or its participation in any Letter of Credit affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 or mitigate the applicability of Section 2.23, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense reasonably deemed by such Lender to be material and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender.

(b) If (i) any Lender requests compensation under Section 2.15 or gives notice under Section 2.23, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Disqualified Lender or (iv) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (1) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation) or (2) prepay the Loans and, if applicable, terminate the Revolving Commitments of such Defaulting Lender; provided that (A) in the case of preceding clause (1), the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable (and if a Revolving Commitment is being assigned and delegated, each Issuing Bank), which consents, in each case, shall not unreasonably be withheld, conditioned or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and unreimbursed participations in LC Disbursements and Swing Line Loans, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder from (x) in the case of preceding clause (1), the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (y) in the case of preceding clause (2), from the Borrower, (C) in the case of preceding clause (1), the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.15, or payments required to be made pursuant to Section 2.17 or a notice given under Section 2.23, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

#### SECTION 2.20 Incremental Credit Extensions.

(a) The Borrower may at any time or from time to time on one or more occasions after the Effective Date, by written notice delivered to the Administrative Agent request (i) one or more additional Classes of term loans (each an “Incremental Term Facility”), (ii) one or more additional term loans of the same Class of any existing Class of term loans (each an “Incremental Term Increase”) and (iii) one or more increases in the amount of the Revolving Commitments of any Class (each such increase, an “Incremental Revolving Commitment Increase” and, together with any Incremental Term Facility and any Incremental Term Increase,

the “Incremental Facilities” and any Loans thereunder, the “Incremental Loans”); provided that, after giving effect to the effectiveness of any Incremental Facility Amendment, no Event of Default shall have occurred and be continuing or would result therefrom (provided, further that, in the case of an Incremental Facility incurred to finance a Limited Condition Transaction, if the Borrower has made an LCT Election, such condition shall be that no Event of Default shall have occurred and be continuing at the LCT Test Date). Notwithstanding anything to contrary herein, the aggregate principal amount of the Incremental Facilities that can be incurred at any time shall not exceed the Incremental Cap at such time. Each Incremental Facility shall be in a minimum principal amount of \$10,000,000 and integral multiples of \$1,000,000 in excess thereof (unless the Borrower and the Administrative Agent otherwise agree); provided that such amount may be less than \$10,000,000 to the extent such amount represents all the remaining availability under the aggregate principal amount of Incremental Facilities set forth above.

(b) (i) The Incremental Term Loans (a)(1) shall rank equal or junior in right of payment and equal or junior in right of security with the Term Loans or may be unsecured, and if junior in right of payment and/or security or unsecured, shall be established as a separate facility than the facility for the Term Loans that are secured by the Collateral on a first priority basis, (2) shall be structured such that neither Holdings nor any Restricted Subsidiary is a guarantor with respect to such Indebtedness unless Holdings or such Restricted Subsidiary is a Loan Party which shall have previously or substantially concurrently guaranteed the Loan Document Obligations, and (3) if secured, the obligations in respect thereof shall not be secured by Liens on the assets of Holdings and the Restricted Subsidiaries, other than assets constituting Collateral, and if established as a separate facility, shall be subject to a customary intercreditor agreement with the Administrative Agent and/or Collateral Agent substantially consistent with the applicable Intercreditor Agreement together with any immaterial changes in form and substance reasonably satisfactory to the Administrative Agent and/or Collateral Agent (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior liens may be secured by Liens that are pari passu with or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans), (b) shall not (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the Term Maturity Date of the Initial Term Loans) mature earlier than the Term Maturity Date of the Initial Term Loans, (c) shall not (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not have a shorter Weighted Average Life to Maturity than the remaining Initial Term Loans) have a shorter Weighted Average Life to Maturity than the remaining Initial Term Loans, (d) shall have a maturity date (subject to clause (b)), an amortization schedule (subject to clause (c)), interest rates (including through fixed interest rates), “most favored nation” provisions (if any), interest margins, rate floors, upfront fees, funding discounts, original issue discounts, financial covenants (if any) and prepayment terms and premiums as determined by the Borrower and the Additional Term Lenders thereunder; provided that, for any Incremental Term Loans which are secured on a pari passu basis with the Initial Term Loans and ranking pari passu in right of payment with the Initial Term Loans, in the event that the Effective Yield for any such Incremental Term Loans is greater than the Effective Yield for the Initial Term Loans by more

than 0.50% per annum, then the Effective Yield for the Initial Term Loans shall be increased to the extent necessary so that the Effective Yield for the Initial Term Loans is equal to the Effective Yield for such Incremental Term Loans minus 0.50% per annum; provided, further, that if the Incremental Term Loans include an interest rate floor greater than the applicable interest rate floor under the Initial Term Loans, such differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the interest rate margin under the Initial Term Loans shall be required, but only to the extent an increase in the interest rate floor in the Initial Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the Initial Term Loans shall be increased to the extent of such differential between interest rate floors, (e) (i) to the extent secured on a pari passu basis with the Initial Term Loans and pari passu in right of payment with the Initial Term Loans, may provide for the ability to participate (x) on a pro rata basis or less than pro rata basis (but not greater than pro rata basis) in any voluntary prepayments of the Initial Term Loans and (y) on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis other than in the case of prepayment with Other Term Loans incurred pursuant to a Refinancing Amendment to refinance such Incremental Term Loans or any other Credit Agreement Refinancing Indebtedness in respect of such Incremental Term Loans) in any mandatory prepayments of the Initial Term Loans and (ii) to the extent subordinated in right of payment to the Initial Term Loans, subordinated in right of security to the Initial Term Loans and/or unsecured, shall be prepaid on a less than pro rata basis in any prepayments of the Initial Term Loans (other than in the case of a prepayment with Other Term Loans pursuant to a Refinancing Amendment or any other Credit Agreement Refinancing Indebtedness, in each case to refinance such Incremental Term Loans) and (f) may otherwise have terms and conditions different from those of the Term Loans; provided that (x) to the extent the terms and documentation with respect to such Incremental Term Loans are not consistent with the existing Initial Term Loans (except with respect to matters contemplated by clauses (a), (b), (c), (d) and (e) above), the covenants, events of default and guarantees of any such Incremental Term Loans shall not be materially more restrictive to the Borrower, when taken as a whole, than the terms of the Initial Term Loans unless (1) Lenders under the Initial Term Loans also receive the benefit of such more restrictive terms (it being understood that, to the extent that any covenant, event of default or guarantee is added or modified for the benefit of any Incremental Term Facility, no consent shall be required from the Administrative Agent or any of the Term Lenders to the extent that such covenant, event of default or guarantee is also added or modified for the benefit of the existing Term Loans), (2) any such provisions apply after the Term Maturity Date with respect to the Initial Term Loans or (3) such terms are reasonably satisfactory to the Administrative Agent and the Borrower and (y) in no event shall it be a condition to the effectiveness of, or borrowing under, any such Incremental Term Loans that any representation or warranty of any Loan Party set forth herein be true and correct, except and solely to the extent required by the Additional Term Lenders providing such Incremental Term Loans. Any Incremental Term Increase shall be on the same terms (other than original issue discount and upfront fees but subject to clause (d) above) and pursuant to the same documentation applicable to the Term Loans (except with respect to the Incremental Facility Amendment evidencing such Incremental Term Increase)). Any Incremental Term Facility shall be on terms and pursuant to documentation as determined by the Borrower and the Additional Term Lenders providing such Incremental Term Facility, subject to the restrictions and exceptions set forth above. Each Incremental Facility Amendment may,

without the consent of any other Lenders, effect technical and corresponding amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.20, including any amendments necessary to provide that such Incremental Term Loans are fungible with any existing Class of Loans for U.S. federal income tax purposes.

(ii) The Incremental Revolving Commitment Increase shall be treated the same as the Class of Revolving Commitments being increased (including with respect to maturity date thereof) and shall be considered to be part of the Class of Revolving Loans being increased). Any Incremental Revolving Commitment Increase shall be on the same terms (other than upfront fees) and pursuant to the same documentation (other than the Incremental Facility Amendment evidencing such Incremental Revolving Commitment Increase) applicable to the Revolving Loans (excluding upfront fees and customary arranger fees).

(c) Each notice from the Borrower pursuant to this Section shall set forth the requested amount of the relevant Incremental Term Loans or Incremental Revolving Commitment Increases.

(d) Commitments in respect of any Incremental Loans shall become Commitments (or in the case of an Incremental Revolving Commitment Increase to be provided by an existing Lender with a Revolving Commitment, an increase in such Lender's applicable Revolving Commitment) under this Agreement pursuant to an amendment (an "Incremental Facility Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each applicable Additional Lender, if any, and the Administrative Agent (provided, that if such amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall not be required to execute or acknowledge such amendment; provided, further that, in any event, the Administrative Agent shall receive prior written notice of such Incremental Facility Amendment). An Incremental Facility may be provided, subject to the prior written consent of the Borrower (not to be unreasonably withheld), by any existing Lender (it being understood that no existing Lender shall have the right to participate in any Incremental Facility or, unless it agrees, be obligated to provide any Incremental Loans) or by any Additional Lender. Any loan under an Incremental Term Increase and any loan under an Incremental Revolving Commitment Increase shall be a "Loan" for all purposes of this Agreement and the other Loan Documents. The Incremental Facility Amendment may, subject to Section 2.20(b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.20 (including, in connection with an Incremental Revolving Commitment Increase, to reallocate Revolving Exposure on a pro rata basis among the relevant Revolving Lenders and including voting rights as contemplated by Section 9.02). The effectiveness of any Incremental Facility Amendment and the occurrence of any credit event (including the making (but not the conversion or continuation) of a Loan and the issuance, increase in the amount, or extension of a Letter of Credit thereunder) pursuant to such Incremental Facility Amendment shall be subject to the satisfaction on the date of such Incremental Facility Amendment of such conditions as the

parties thereto shall agree and as required by this Section 2.20 (each such date, an “Incremental Facility Closing Date”). The Borrower will use the proceeds of the Incremental Term Loans and Incremental Revolving Commitment Increases for any purpose not prohibited by this Agreement.

(e) Notwithstanding anything to the contrary, this Section 2.20 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

#### SECTION 2.21 Refinancing Amendments.

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of (i) all or any portion of the Term Loans then outstanding under this Agreement (which for purposes of this clause (i) will be deemed to include any then outstanding Other Term Loans) or (ii) all or any portion of the Revolving Loans (or unused Revolving Commitments) under this Agreement (which for purposes of this clause (ii) will be deemed to include any then outstanding Other Revolving Loans and Other Revolving Commitments), in the form of (x) Other Term Loans or Other Term Commitments or (y) Other Revolving Loans or Other Revolving Commitments, as the case may be, in each case pursuant to a Refinancing Amendment; provided that such Credit Agreement Refinancing Indebtedness (i) will be unsecured or will rank pari passu or junior in right of payment and of security with the other Loans and Commitments hereunder, (ii) will have such pricing and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof, and (iii) the Net Proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of any outstanding Term Loans or reduction of Revolving Commitments being so refinanced, as the case may be. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of the conditions as agreed between the lenders providing such Credit Agreement Refinancing Indebtedness and the Borrower. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.21 shall be in an aggregate principal amount that is (x) not less than \$10,000,000 in the case of Other Term Loans or \$10,000,000 in the case of Other Revolving Loans and (y) an integral multiple of \$1,000,000 in excess thereof (in each case unless the Borrower and the Administrative Agent otherwise agree). Any Refinancing Amendment may provide for the issuance of Letters of Credit for the account of the Borrower pursuant to any Other Revolving Commitments established thereby, in each case on terms substantially equivalent to the terms applicable to Letters of Credit under the Revolving Commitments; provided that no Issuing Bank shall be required to act as “issuing bank” under any such Refinancing Amendment without its written consent. 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Commitments). In the case of any Credit Agreement Refinancing Indebtedness in the form of Other Revolving Loans or Other Revolving Commitments, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving



Commitments (and related outstandings), (B) repayments required upon the maturity date of the Other Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (2) below)) of Loans with respect to Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments, (2) the permanent repayment of Revolving Loans with respect to, and termination of, Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments (except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared with any other Class with a later maturity date than such Class) and (3) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans. 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. In addition, if so provided in the relevant Refinancing Amendment and with the consent of each Issuing Bank and/or the Swing Line Lender, as applicable, participations in Letters of Credit and/or Swing Line Loans expiring on or after the Revolving Maturity Date shall be reallocated from Lenders holding Revolving Commitments to Lenders holding extended revolving commitments in accordance with the terms of such Refinancing Amendment; provided, however, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Commitments, be deemed to be participation interests in respect of such Revolving Commitments and the terms of such participation interests (including, without limitation, the commission applicable thereto) shall be adjusted accordingly.

(b) If, in connection with any proposed Refinancing Amendment with respect to any Class of Loans, any Lender of such Class which has been offered to such Lender who declines to provide any portion of the Credit Agreement Refinancing Indebtedness on the terms provided by the other Lenders providing such Credit Agreement Refinancing Indebtedness (each such Lender, a “Non-Refinancing Lender”) then the Borrower may, on notice to the Administrative Agent and the Non-Refinancing Lender, (i) cause such Lender to (and such Lender shall be obligated to (and to the extent such Non-Refinancing Lender does not execute such Refinancing Amendment, such Refinancing Amendment shall nonetheless be effective without such signature of the Non-Refinancing Lender)) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the applicable Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) in connection with such Refinancing Amendment or (ii) in the case of Revolving Commitments only, prepay, and terminate the Revolving Commitments of, such Lenders; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) such Non-Refinancing Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the applicable Class assigned by it pursuant to this Section 2.21(b), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11) payable to it hereunder from the Eligible Assignee (to the extent of

such outstanding principal and accrued interest and fees) and (b) in connection with an assignment pursuant to clause (i), no processing and recordation fee specified in Section 9.04(b) shall be payable in connection therewith. If any applicable Lender shall be deemed a Non-Refinancing Lender and is required to assign all or any portion of its Initial Term Loans on or prior to the six-month anniversary of the Amendment No. 2 Effective Date in connection with any such Refinancing Amendment constituting a Repricing Transaction, the Borrower shall pay such Non-Refinancing Lender a fee equal to 1.00% of the principal amount of the Initial Term Loans so assigned.

(c) This Section 2.21 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

#### SECTION 2.22 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii) Reallocation of Payments. Subject to the last sentence of Section 2.11(f), 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 VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, in the case of a Revolving Lender, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to each Issuing Bank or the Swing Line Lender hereunder; third, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fourth, in the case of a Revolving Lender, if so 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; fifth, to the payment of any amounts owing to the Lenders, the Swing Line Lender or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender, such Issuing Bank against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; sixth, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and seventh, to that Defaulting Lender or

as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans or LC Disbursements and such Lender is a Defaulting Lender under clause (a) of the definition thereof, such payment shall be applied solely to pay the relevant Loans of, and LC Disbursements owed to, the relevant non-Defaulting Lenders on a pro rata basis prior to being applied pursuant to Section 2.05(j) or this Section 2.22(a)(ii). 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 Section 2.05(j) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive or accrue any commitment fee pursuant to Section 2.12(a) 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 (y) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.12(b).

(iv) 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 Swing Line Loans pursuant to Section 2.04 and, in Letters of Credit pursuant to Section 2.05 and the payments of participation fees pursuant to Section 2.12(b), the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving 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 and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that non-Defaulting Lender minus (2) the sum of (A) the aggregate principal amount of the Revolving Loans of that non-Defaulting Lender plus (B) the LC Exposure of that non-Defaulting Lender plus (C) the Swing Line Obligations of that non-Defaulting Lender.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, cash collateralize the Issuing Banks' and Swing Line Lender's Defaulting Lender Fronting Exposure in accordance with the procedures set forth in Section 2.05(j).

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swing Line Lender and each Issuing Bank 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), such 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 Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.22(a)(iv) or the proviso to the definition thereof), 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; and provided, further, that except to the extent otherwise expressly agreed by the affected parties and subject to Section 9.20, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### SECTION 2.23 Illegality.

If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to the Adjusted LIBO Rate, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to Borrower through the Administrative Agent (i) any obligation of such Lender to make or continue Eurodollar Loans in the affected currency or currencies or to convert ABR Loans to Eurodollar Loans in the affected currency or currencies shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Adjusted LIBO Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate 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, (x) the Borrower shall, upon three (3) Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate Base Rate either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted LIBO Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Adjusted LIBO Rate 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 Adjusted LIBO Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.24 Loan Modification Offers.

(a) At any time after the Effective Date, the Borrower may on one or more occasions, by written notice to the Administrative Agent, make one or more offers (each, a “Loan Modification Offer”) to all the Lenders of one or more Classes (each Class subject to such a Loan Modification Offer, an “Affected Class”) to effect one or more Permitted Amendments relating to such Affected Class pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower (including mechanics to permit cashless rollovers and exchanges by Lenders). Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Loans and Commitments of the Lenders of the Affected Class that accept the applicable Loan Modification Offer (such Lenders, the “Accepting Lenders”) and, in the case of any Accepting Lender, only with respect to such Lender’s Loans and Commitments of such Affected Class as to which such Lender’s acceptance has been made.

(b) A Permitted Amendment shall be effected pursuant to a Loan Modification Agreement executed and delivered by Holdings, Borrower, each applicable Accepting Lender and the Administrative Agent (provided that, if such amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such amendment). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each Loan Modification Agreement may, without the consent of any Lender other than the applicable Accepting Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to give effect to the provisions of this Section 2.24, including any amendments necessary to treat the applicable Loans and/or Commitments of the Accepting Lenders as a new “Class” of loans and/or commitments hereunder. In the case of any Permitted Amendment in the form of Revolving Loans or Revolving Commitments of an Affected Class, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Revolving Commitments of the Affected Class (and related outstandings), (B) repayments required upon the maturity date of the Revolving Commitments of the Affected Class and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (2) below)) of Loans with respect to Revolving Commitments of the Affected Class after the date of obtaining any Revolving Commitments of the Affected Class shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments, (2) the permanent repayment of Revolving Loans with respect to, and termination of, Revolving Commitments of the Affected Class after the date of obtaining any Revolving Commitments of the Affected Class shall be made on a pro rata basis or less than pro rata basis with all other Revolving Commitments (except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared with any other Class with a later maturity date than such Class) and (3) assignments and participations of Revolving Commitments of the Affected Class and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans. 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.

(c) If, in connection with any proposed Loan Modification Offer, any Lender declines to consent to such Loan Modification Offer on the terms and by the deadline set forth in such Loan Modification Offer (each such Lender, a “Non-Accepting Lender”) then the Borrower may, on notice to the Administrative Agent and the Non-Accepting Lender, (i) replace such Non-Accepting Lender in whole or in part by causing such Lender to (and such Lender shall be obligated to) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the Affected Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) or (ii) in the case of Revolving Commitments only, prepay and terminate the Revolving Commitments of, such Lenders; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) the applicable assignee shall have agreed to provide Loans and/or Commitments on the terms set forth in the applicable Permitted Amendment, (b) such Non-Accepting Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the Affected Class assigned by it pursuant to this Section 2.24(c), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (c) the processing and recordation fee specified in Section 9.04(b) shall be payable by the Borrower.

(d) Notwithstanding anything to the contrary, this Section 2.24 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Lenders that as of the Effective Date:

##### SECTION 3.01 Organization; Powers.

Subject to the Legal Reservations, each of Holdings, the Borrower and the Restricted Subsidiaries is (a) duly organized or incorporated, validly existing and in good standing (to the extent such concept exists in the jurisdiction of organization of such Person) under the laws of the jurisdiction of its organization or incorporation, (b) has the corporate or other organizational power and authority to carry on its business as now conducted and to execute, deliver and perform its obligations under each Loan Document to which it is a party and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the cases of clause (a) (other than with respect to the Borrower), clause (b) and clause (c), where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

### SECTION 3.02 Authorization; Enforceability.

This Agreement has been duly authorized, executed and delivered by each of Holdings and the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to the Legal Reservations.

### SECTION 3.03 Governmental Approvals; No Conflicts.

Except as set forth on Schedule 3.03, the Financing Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents and the Second Lien Loan Documents, (b) will not violate (i) the Organizational Documents of, or (ii) any Requirements of Law applicable to, Holdings, the Borrower or any Restricted Subsidiary, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any Restricted Subsidiary or their respective assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by Holdings, the Borrower or any Restricted Subsidiary, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary (other than Liens created under the Loan Documents and the Second Lien Loan Documents, as applicable) except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right, as the case may be, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### SECTION 3.04 Financial Condition; No Material Adverse Effect.

(a) The Historical Audited Financial Statements and the Unaudited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the consolidated financial condition of Holdings and its Subsidiaries as of the respective dates thereof and their consolidated results of operations and cash flows for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The Pro Forma Financial Statements have been prepared in good faith, based on assumptions and adjustments believed by the Borrower to be reasonable as of the date of delivery thereof, and, to the knowledge of Holdings and the Borrower, present fairly in all material respects on a pro forma basis the estimated unaudited financial position of Holdings and its Subsidiaries as at March 31, 2017 and their estimated unaudited results of operations for the period covered thereby, in each case after giving effect to the Transactions, subject to audit adjustments.

(c) Since the Effective Date, there has been no Material Adverse Effect.

### SECTION 3.05 Properties.

Each of Holdings, the Borrower and the Restricted Subsidiaries has good and marketable title to, or valid interests in, all its real and tangible personal property material to its business, if any (including all of the Mortgaged Properties), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in each case, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

### SECTION 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 3.06, and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has, to the knowledge of Holdings or the Borrower, become subject to any Environmental Liability or (iii) has received written notice of any claim, citation, investigation, or remedial or corrective action obligation, with respect to any Environmental Liability.

### SECTION 3.07 Compliance with Laws and Agreements.

Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures and other agreements and instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

### SECTION 3.08 Investment Company Status.

None of the Loan Parties is required to register as an “investment company” under the Investment Company Act of 1940, as amended from time to time.

### SECTION 3.09 Taxes.

Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns and reports required to have been filed and (b) have paid or caused to be paid all Taxes required to be paid, except any Taxes that are being contested in good faith by appropriate proceedings, provided that Holdings, the Borrower or Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.



### SECTION 3.10 ERISA.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan sponsored by a Loan Party is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the three year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, and (ii) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA. There exists no Unfunded Pension Liability with respect to Plans in the aggregate (taking into account only Plans with positive Unfunded Pension Liability) except as would not be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect: (i) each employee benefit plan (as defined in Section 3(2) of ERISA) sponsored by Holdings or the Borrower that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service; (ii) to the knowledge of Holdings and the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status; and (iii) there are no pending or, to the knowledge of Holdings and the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any such plan.

### SECTION 3.11 Disclosure.

As of the Effective Date, all written factual information and written factual data (other than projections, any pro forma financial information (including the Pro Forma Financial Statements), budgets, other forward-looking information or information consisting of statements, estimates or forecasts regarding the future condition of the industries in which the Loan Parties operate and information of a general economic or industry specific nature) made available by the Borrower or its representatives, in their official capacity as such, to the Administrative Agent, any Joint Lead Arranger or any Lender in connection with the Transactions, when taken as a whole after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not materially misleading in the light of the circumstances under which they were made; provided that, with respect to the projections of Holdings and its Subsidiaries included in the Information Memorandum, Holdings and the Borrower represent that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time furnished, it being

understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

SECTION 3.12 Subsidiaries. As of the Effective Date, after giving effect to the Transactions to occur on the Effective Date, Schedule 3.12 sets forth the name of, and the ownership interest of each Subsidiary of Holdings.

SECTION 3.13 Intellectual Property; Licenses, Etc.

Except as would not reasonably be expected to have a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries owns, licenses or possesses the right to use all Intellectual Property that is reasonably necessary for the operation of its business substantially as currently conducted. Neither Holdings, the Borrower nor any Restricted Subsidiary, in the operation of its business as currently conducted, is infringing upon the Intellectual Property of any Person, except for such infringements that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No claim or litigation challenging the use of any Intellectual Property by Holdings, the Borrower or any Restricted Subsidiary or the validity or enforceability of any Intellectual Property owned by Holdings, the Borrower or any Restricted Subsidiary is pending or, to the knowledge of Holdings and the Borrower, threatened in writing against Holdings, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 3.14 Solvency.

As of the Effective Date, immediately after, and giving Pro Forma Effect to, the consummation of each of the Transactions to occur on the Effective Date, after taking into account, and giving effect to, all applicable rights of indemnity and contribution, as of such time, (a) the sum of the debt (including contingent liabilities) of Holdings and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole; (b) the capital of Holdings and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Holdings and its Subsidiaries, taken as a whole, contemplated as of the date hereof; (c) the present fair and saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole, is greater than the amount that will be required to pay the probable liabilities (including contingent liabilities) of Holdings and its Subsidiaries as they become absolute and matured in the ordinary course; and (d) Holdings and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debts as they mature in the ordinary course of business. For the purposes of this Section 3.14, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5) in the ordinary course of business.

### SECTION 3.15 Federal Reserve Regulations.

No part of the proceeds of the Loans will be used by Holdings or any Subsidiary, directly or indirectly, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors) or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

### SECTION 3.16 USA PATRIOT Act; OFAC and Anti-Corruption.

(a) The Borrower will not, directly or, knowingly, indirectly use the proceeds of the Loans or lend, contribute or otherwise make available such proceeds to any Person for the purpose of funding activities or business of or with any Person that, at the time of such funding, is the subject of Sanctions, or in any Sanctioned Country, in each case, in violation of Sanctions, or in any other manner that would result in a violation by any party to this Agreement of Sanctions applicable to such party. The Borrower will not use the proceeds of the Loans for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity on behalf of the government, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation in any material respect of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption law.

(b) Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance in all material respects with (i) applicable regulations and other Sanctions, (ii) Title III of the USA Patriot Act and (iii) the FCPA and any other applicable anti-corruption law.

(c) None of Holdings, the Borrower, any of the Restricted Subsidiaries, one or more individuals or entities holding 50% or more of the equity interests of Holdings, or, to the knowledge of the Borrower, any director, officer, employee or agent thereof, are individuals or entities currently on OFAC’s list of Specially Designated Nationals and Blocked Persons and/or any similar list maintained by any Sanctions Authority, or located, organized or resident in a Sanctioned Country.

### SECTION 3.17 Security Documents

(a) Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Security Documents and any other documents and instruments necessary to satisfy the Collateral and Guarantee Requirement, together with such timely filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to the Administrative Agent (or its agent) of any Pledged Debt (as defined in the Collateral Agreement) and any Pledged Equity (as defined in the Collateral Agreement) required to be delivered pursuant to the applicable Security Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties to the extent required hereunder or thereunder, a legal, valid, enforceable (subject to applicable Debtor Relief Laws and any other

applicable bankruptcy, insolvency, reorganization, moratorium, examinership or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law) and perfected Lien with the ranking or priority required by the relevant Security Documents (subject to Liens permitted herein) on all right, title and interest of the respective Loan Parties in the Collateral described therein (other than foreign Intellectual Property).

(b) Notwithstanding anything herein (including this [Section 3.17](#)) or in any other Loan Document to the contrary, neither the Borrower nor any other 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 (other than a Foreign Subsidiary that becomes a Loan Guarantor pursuant to [Section 5.13](#) and to the extent local law security documents are delivered pursuant to [Section 5.13](#)) or any foreign Intellectual Property, 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 Requirements or (C) on the Effective Date and until required pursuant to [Section 5.19](#) or [4.01\(f\)](#), 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 Effective Date pursuant to [Section 4.01\(f\)](#).

SECTION 3.18 [\[Reserved\]](#)

SECTION 3.19 [\[Reserved\]](#)

SECTION 3.20 [Use of Proceeds](#)

The Borrower has used the proceeds of the Loans and the Letters of Credit issued hereunder only in compliance with (and not in contravention of) [Section 5.10](#), applicable Requirements of Law and each Loan Document.

#### ARTICLE IV

#### CONDITIONS

SECTION 4.01 [Effective Date](#).

The obligation of each Lender to make Loans and the obligations of each Issuing Bank to issue Letters of Credit hereunder on the Effective Date shall be subject to satisfaction of the following conditions (or waiver thereof in accordance with [Section 9.02](#)):

(a) The Administrative Agent (or its counsel) shall have received from the Borrower and Holdings either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent, the Lenders, the Swing Line Lender and the Issuing Banks and dated the Effective Date) of Latham & Watkins LLP, New York counsel for the Loan Parties.

(c) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming satisfaction of the conditions set forth in paragraphs (g) and (i) of this Section 4.01 and (ii) a customary certificate of each Effective Date Loan Party, dated the Effective Date, executed by any Responsible Officer of such Loan Party including or attaching only those documents referred to in paragraph (d) of this Section 4.01 and confirming that such documents are correct, complete and in full force and effect and have not been amended or superseded as of the Effective Date.

(d) The Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party relating to it, certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) copies of resolutions of the Board of Directors of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by a secretary, an assistant secretary or a Responsible Officer of such Loan Party as being in full force and effect without modification or amendment and (iv) a good standing certificate (to the extent such concept exists in the jurisdiction of incorporation, organization or formation of such Loan Party) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Administrative Agent shall have received (or shall receive substantially contemporaneously with funding on the initial Loans hereunder) (which amounts may be funded from the proceeds of the initial Loans hereunder) all fees and other amounts previously agreed in writing by the Joint Lead Arrangers and the Borrower to be due and payable on or prior to the Effective Date, including, to the extent invoiced at least three (3) Business Days prior to the Effective Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) The Effective Date Loan Parties shall have satisfied the Collateral and Guarantee Requirement; provided that to the extent any lien searches (other than UCC lien searches in the jurisdiction of organization of the Borrower and the Loan Guarantors) or Collateral (including the creation or perfection of any security interest) is not or cannot be provided on the Effective Date (other than (i) the execution and delivery of the Guarantee Agreement and the Collateral Agreement by the Effective Date Loan Parties described in the definition of such terms and (ii) the creation and perfection of the security interest in Collateral with respect to which a lien may be perfected solely by the filing of financing statements under the UCC and/or by delivering stock certificates of the certificated stock of the Borrower and any wholly-owned U.S. domestic subsidiaries of the Borrower to the extent the capital stock represented thereby is required to be pledged hereunder (other than, in the case of the Company

and its subsidiaries, with respect to any such certificate that has not been made available prior to the Effective Date, to the extent the Borrower has used commercially reasonable efforts to procure delivery thereof, in which case, such stock or equivalent certificate may instead be delivered within five (5) Business Days after the Effective Date (or such later date as the Administrative Agent may agree)) after the Borrower's use of commercially reasonable efforts to do so without undue burden or expense, then the provision and/or perfection, as applicable, of any such lien search and/or Collateral shall not constitute a condition precedent to the availability of the Loans hereunder, but may instead be provided within ninety days after the Effective Date, subject to such extensions as are reasonably agreed by the Administrative Agent, pursuant to arrangements to be mutually agreed by the parties hereto acting reasonably.

(g) Since the date of the Acquisition Agreement, there shall not have occurred any Company Material Adverse Effect.

(h) The Joint Lead Arrangers shall have received the Historical Audited Financial Statements, the Unaudited Financial Statements and the Pro Forma Financial Statements.

(i) All Specified Acquisition Agreement Representations and all Specified Representations shall, in each case, be true and correct in all material respects on the Effective Date (without duplication of any materiality qualifier therein).

(j) The Second Lien Term Loans shall be funded substantially concurrently with the initial funding of the Loans on the Effective Date.

(k) (i) The Equity Contribution and the Refinancing shall have been consummated, or substantially concurrently with the initial funding of Loans and the Second Lien Term Loans on the Effective Date, shall be consummated and (ii) the Acquisition shall have been consummated or, substantially concurrently with the initial funding of Loans and the Second Lien Term Loans on the Effective Date, shall be consummated pursuant to the Acquisition Agreement in all material respects and in accordance with applicable law (in all material respects and including that there shall be no order, injunction or decree of any governmental authority restraining or prohibiting the consummation of the Acquisition) without giving effect to any amendments to the Acquisition Agreement or waivers of or consents to the provisions thereof that, in any such case, are materially adverse to the interests of the Joint Lead Arrangers without the consent of the Joint Lead Arrangers, such consent not to be unreasonably withheld, conditioned or delayed and otherwise, in accordance with the terms of the Commitment Letter.

(l) The Administrative Agent shall have received a certificate from a Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions, substantially in the form of Exhibit P.

(m) The Administrative Agent and the Joint Lead Arrangers shall have received, at least three (3) Business Days prior to the Effective Date, all documentation and other information about the Loan Parties as shall have been reasonably requested in writing at least ten

(10) Business Days prior to the Effective Date by the Administrative Agent or the Joint Lead Arrangers that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

#### SECTION 4.02 Each Credit Event.

The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of (i) the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, as the case may be (without duplication of any other materiality qualifier); provided that, in each case, 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.

(b) (i) At the time of and immediately after giving effect to such Borrowing, or the issuance, amendment, renewal or extension of such Letter of Credit, as the case may be, or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, no Default or Event of Default shall have occurred and be continuing.

(c) The Administrative Agent and, if applicable, the relevant Issuing Bank or the Swing Line Lender, shall have received a Borrowing Request in accordance with the requirements hereof.

Each Borrowing Request (provided that a conversion or a continuation of a Borrowing shall not constitute a “Borrowing” for purposes of this Section 4.02), other than a Borrowing under any Incremental Facility or a Borrowing the proceeds of which are used to finance a Limited Condition Transaction, and each issuance, amendment, renewal or extension of a Letter of Credit (other than any issuance, amendment, renewal or extension of a Letter of Credit on the Effective Date) shall be deemed to constitute a representation and warranty by Holdings and the Borrower on (i) the date thereof or (ii) in the case of any Borrowing or issuance of a Letter of Credit the proceeds of which are used to finance a Limited Condition Transaction, the LCT Test Date, as to the matters specified in paragraphs (a) and (b) of this Section 4.02.

AFFIRMATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements and Other Information.

Holdings or the Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) on or before the date that is one hundred (100) days (or one hundred and twenty (120) days in the case of the fiscal year ended December 31, 2017), after the end of each fiscal year of Holdings commencing with the fiscal year ended December 31, 2017, audited consolidated balance sheet and audited consolidated statements of income and retained earnings and statement of cash flows of Holdings and its Subsidiaries as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year and accompanied by any final management letters, customary management discussion and analysis, all reported on by an independent public accountant of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant) or the impending maturity of any Indebtedness within the succeeding twelve months)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition as of the end of and for such year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ended June 30, 2017, on or before the date that is sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, unaudited consolidated balance sheet and unaudited consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and accompanied by customary management discussion and analysis, all certified by a Financial Officer as presenting fairly in all material respects the financial condition as of the end of and for such fiscal quarter and such portion of the fiscal year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a) and (b) above, the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(d) not later than five (5) days after any delivery of financial statements under paragraph (a) or (b) above, a Compliance Certificate signed by a Financial Officer (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations (A) demonstrating compliance with the Financial Performance Covenant to the extent required to be tested at such



time (including a calculation of Consolidated EBITDA for such period with any applicable pro forma and other adjustments expressly contemplated to be included in such certificate pursuant to the other provisions of this Agreement), (B) in the case of financial statements delivered under paragraph (a) above and only to the extent the Borrower would be required to prepay Term Borrowings pursuant to Section 2.11(d), beginning with the financial statements for the fiscal year of Holdings ending December 31, 2018, of Excess Cash Flow for such fiscal year and (C) of the Available Amount then in effect.

(e) not later than one hundred (100) days after the end of each fiscal year of Holdings (or one hundred and twenty (120) days in the case of the fiscal year ended December 31, 2017), a detailed consolidated budget for Holdings and its Subsidiaries for the following fiscal year (including a projected consolidated balance sheet and consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget); provided that the obligations of this paragraph shall be suspended upon and following the filing for an IPO; it being understood and agreed that any financial or business projections furnished by any Loan Party (i)(A) are subject to significant uncertainties and contingencies, which may be beyond the control of the Loan Parties, (B) no assurance is given by the Loan Parties that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (ii) are not a guarantee of performance;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (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) filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or with any national securities exchange; and

(g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, as the Administrative Agent may reasonably request in writing, in each case subject to the limitations set forth below.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of Holdings and its Subsidiaries by furnishing (x) the applicable financial statements of any successor of Holdings, any Qualified Reporting Subsidiary or any Holdings Parent or (y) the Form 10-K or 10-Q (or the equivalent), as applicable, of Holdings (or any Holdings Parent or Qualified Reporting Subsidiary) filed with the SEC within the applicable time periods required by applicable law and regulations (including any extended deadlines available thereunder in connection with an IPO); provided that (i) to the extent such information relates to a Holdings Parent, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to Holdings and its Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under

Section 5.01(a), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant) or the impending maturity of any Indebtedness).

Documents required to be delivered pursuant to Section 5.01(a), (b) or (f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings’ or the Borrower’s website on the Internet at the website address listed on Schedule 9.01 (or otherwise notified pursuant to Section 9.01(d)); or (ii) on which such documents are posted on Holdings’ or the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings shall deliver paper copies of such documents to the Administrative Agent upon its reasonable request until a written notice to cease delivering paper copies is given by the Administrative Agent and (ii) Holdings shall notify the Administrative Agent (by fax or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

Notwithstanding anything to the contrary herein, neither Holdings nor any Subsidiary shall be required to deliver, disclose, permit the inspection, examination or making of copies of or excerpts from, or any discussion of, any document, information, or other matter (i) that constitutes a trade secret or proprietary information or (ii) any information to the extent that the provision thereof would violate any law, rule or regulation, fiduciary duty, binding agreement, or any obligation of confidentiality binding upon, or waive any privilege of, Holdings, any Subsidiary or any of their respective Affiliates; provided, that in the event that any Loan Party does not provide information in reliance on clause (ii) of this sentence, such Loan Party shall provide notice to the Administrative Agent that such information is being withheld to the extent such Loan Party is able to do so without violating the applicable obligation or waiving privilege and such Loan Party shall use its commercially reasonable efforts to communicate the applicable information in a way that would not violate the applicable obligation or risk waiver of such privilege; *provided, further*, that none of the foregoing shall be construed to limit any Loan Party’s representations and warranties or any of the conditions, in any such case, set forth in this Agreement.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks or another similar electronic system

(the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to the Borrower’s or their Affiliates’ securities. The Borrower hereby agrees that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) by marking Borrower Materials “PUBLIC”, the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (x) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (y) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat the Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”. Each Loan Party hereby acknowledges and agrees that, unless the Borrower notifies the Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 5.01(a), (b) and (c) above are hereby deemed to be suitable for distribution, and to be made available, to all Lenders and may be treated by the Administrative Agent and the Lenders as not containing any Material Non-Public Information and all other information shall be assumed to contain Material Non-Public Information.

#### SECTION 5.02 Notices of Material Events.

Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

(a) the occurrence of any Default;

(b) to the extent permissible by Requirements of Law, the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings, the Borrower or any Subsidiary, affecting Holdings, the Borrower or any Subsidiary or the receipt of a written notice of an Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event or an increase in Unfunded Pension Liabilities (taking into account only Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given, in each case that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a written statement of a Responsible Officer of Holdings or the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

#### SECTION 5.03 Information Regarding Collateral.

(a) Holdings or the Borrower will furnish to the Administrative Agent promptly (and in any event within thirty (30) days after or such longer period as reasonably agreed to by the Administrative Agent) written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization or (iii) in any Loan Party's organizational identification number to the extent that such Loan Party is organized or owns Mortgaged Property in a jurisdiction where an organizational identification number is required to be included in a UCC financing statement for such jurisdiction.

(b) The Borrower shall provide in each Compliance Certificate delivered pursuant to Section 5.01(d) any changes, if any, to Schedule III to the Collateral Agreement as required to make such schedules accurate as of the last day of the fiscal quarter for which such Compliance Certificate is delivered.

#### SECTION 5.04 Existence; Conduct of Business.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, Intellectual Property and Governmental Approvals material to the conduct of its business, except to the extent (other than with respect to the preservation of the existence of Holdings and the Borrower) that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

#### SECTION 5.05 Payment of Taxes, etc.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, pay, discharge or otherwise satisfy all Taxes required to be paid by it, except where (a) the same are being contested in good faith by an appropriate proceeding diligently conducted by Holdings, the Borrower or any of their respective Subsidiaries or (b) the failure to make payment would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

#### SECTION 5.06 Maintenance of Properties.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition (casualty, condemnation and ordinary wear and tear excepted), except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the foregoing shall not prohibit any Disposition permitted by Section 6.05.

#### SECTION 5.07 Insurance.

(a) Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which Holdings believes (in the good faith judgment of management of Holdings) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as Holdings believes (in the good faith judgment of the management of Holdings) are reasonable and prudent in light of the size and nature of its business, and will furnish to the Lenders, upon written request from the Collateral Agent, information presented in reasonable detail as to the insurance so carried. The Borrower shall, and shall cause each Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia) to (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured as its interests may appear on each such general liability policy of insurance belonging to or insuring such Restricted Subsidiary (other than directors and officers policies, workers compensation policies and business interruption insurance) and (ii) in the case of each casualty insurance policy belonging to or insuring a Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia), include a loss payable clause or mortgagee endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee or mortgagee thereunder; provided that, unless an Event of Default shall have occurred and be continuing, (A) all proceeds from insurance policies shall be paid to Holdings, the Borrower or the applicable Restricted Subsidiary, (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by Holdings, the Borrower and/or its Subsidiaries, and (C) the Collateral Agent agrees that the Holdings, the Borrower and/or its Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(b) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) furnish to the Collateral Agent information presented in reasonable detail as to the flood insurance so carried.

#### SECTION 5.08 Books and Records; Inspection and Audit Rights.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to maintain proper books of record and account in which entries that are full, true and correct in all material respects in a manner to allow financial statements to be prepared in conformity with GAAP (or applicable local standards (it being understood and agreed that

Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder)) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or the Restricted Subsidiaries, as the case may be. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its tangible properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default and such time shall be at the Borrower's expense; provided, further that (a) when an Event of Default exists, the Administrative Agent (or any of their respective 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 and (b) the Administrative Agent shall give Holdings and the Borrower the opportunity to participate in any discussions with Holdings' or the Borrower's independent public accountants.

#### SECTION 5.09 Compliance with Laws.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, comply with all Requirements of Law (including Environmental Laws and any permit, license, or approval thereunder, the FCPA, Sanctions and the USA PATRIOT Act) with respect to it, its property and operations, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### SECTION 5.10 Use of Proceeds and Letters of Credit.

(a) The Borrower will use the proceeds of the Term Loans borrowed on the Effective Date and may use Revolving Loans drawn on the Effective Date, together with cash on hand of the Borrower and proceeds of the Second Lien Term Loans borrowed on the Effective Date to directly or indirectly finance the Transactions, directly or indirectly pay all or a portion of the Transaction Costs, to increase cash on hand, to replace, backstop or cash collateralize Existing Letters of Credit, and for other working capital purposes. The proceeds of the Revolving Loans and Swing Line Loans drawn after the Effective Date will be used only for general corporate purposes, and the Letters of Credit will be used only for general corporate purposes, in each case, including capital expenditures, Permitted Acquisitions, Investments, Restricted Payments, refinancing of Indebtedness and any other transactions not prohibited by this Agreement.

(b) The Borrower will not directly or, to its knowledge, indirectly use the proceeds of any Loan in violation of Sanctions, the USA PATRIOT Act, the FCPA or any other applicable anti-corruption law.

#### SECTION 5.11 Additional Collateral; Additional Guarantors.

(a) If (i) any additional Restricted Subsidiary organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia), is formed or acquired after the Effective Date, (ii) any Restricted Subsidiary ceases to be an Excluded Subsidiary or (iii) the Borrower, at its option, elects to cause a Subsidiary of Holdings organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia) that is not a Wholly Owned Subsidiary (including any consolidated Affiliate in which the Borrower and their respective Subsidiaries own no Equity Interest) to become a Subsidiary Loan Party upon such election, then Holdings or the Borrower will within ninety (90) days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after (x) such newly formed or acquired Restricted Subsidiary is formed or acquired (unless such Restricted Subsidiary is an Excluded Subsidiary), (y) such Restricted Subsidiary ceases to be an Excluded Subsidiary or (z) the Borrower has made such election, cause such Restricted Subsidiary (unless such Restricted Subsidiary is an Excluded Subsidiary) to satisfy the Collateral and Guarantee Requirement with respect to such Restricted Subsidiary and with respect to any Equity Interest in or Indebtedness of such Restricted Subsidiary owned by or on behalf of any Loan Party.

(b) Notwithstanding the foregoing, in the event any real property would be required to be mortgaged pursuant to this Section 5.11, Holdings and the Borrower shall be required to comply with the "Collateral and Guarantee Requirement" as it relates to such real property within ninety (90) days following the formation or acquisition of such real property or such Restricted Subsidiary or the identification of such new Material Subsidiary, or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

#### SECTION 5.12 Further Assurances.

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) Subject, in each case, to the limitations set forth in the Security Documents, if, after the Effective Date, any material assets (other than Excluded Assets), including any Material Real Property, are acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that become subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will notify the Administrative Agent thereof, and, if requested by the

Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section but only as and to the extent required pursuant to the "Collateral and Guarantee Requirement", all at the expense of the Loan Parties and subject to the last paragraph in the definition of the term "Collateral and Guarantee Requirement". In the event any Material Real Property is mortgaged pursuant to this Section 5.12(b), the Borrower or such other Loan Party, as applicable, shall be required to comply with the "Collateral and Guarantee Requirement" and paragraph (a) of this Section 5.12 within ninety (90) days following the acquisition of such Material Real Property or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

**SECTION 5.13 Designation of Subsidiaries.** (a) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately after such designation on a Pro Forma Basis, no Event of Default shall have occurred and be continuing, (ii) any Unrestricted Subsidiary shall also be designated an Unrestricted Subsidiary under (x) the Second Lien Credit Agreement, the Pari Passu Credit Agreement and, in each case, any Permitted Refinancing thereof and (y) any other Junior Financing constituting Material Indebtedness, (iii) Unrestricted Subsidiaries shall not account for more than 5% of Consolidated EBITDA or 5% of total assets of Holdings and its Restricted Subsidiaries determined at the time of designation of such Unrestricted Subsidiary and (iv) no Subsidiary that owns Intellectual Property that is material to the businesses of the other Loan Parties, taken as a whole, may be designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings' or its respective subsidiaries' (as applicable) investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, of Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by Holdings in such Unrestricted Subsidiary pursuant to the preceding sentence in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings' or its Subsidiaries' (as applicable) Investment in such Subsidiary.

(b) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary that is an Excluded Subsidiary as an Electing Guarantor or Electing Guarantor as an Excluded Subsidiary; provided that any Electing Guarantor shall also be designated an Electing Guarantor under the Second Lien Credit Agreement and the Pari Passu Credit Agreement and any Subsidiary that is designated as an "Electing Guarantor" under (and as defined in) the Pari Passu Credit Agreement shall be substantially concurrently designated as an Electing Guarantor hereunder. Pursuant to the definition of "Electing Guarantor", the Borrower may at its option cause any Subsidiary to, execute a supplement to each of the Guarantee Agreement and the Collateral Agreement in order to become a Loan Guarantor under the Guarantee Agreement and a grantor under such Security Documents, respectively, or, to the extent reasonably requested by the Collateral Agent, enter into an appropriate new guarantee and



appropriate new Security Documents substantially consistent with the analogous existing Guarantee Agreement and Security Documents or otherwise in form and substance reasonably satisfactory to Borrower and Collateral Agent and take all other action reasonably requested by the Collateral Agent to grant a perfected (with respect to Collateral consisting of Intellectual Property, if and to the extent required under the Collateral Agreement) security interest in its assets to substantially the same extent as created by the Loan Parties and only if and to the extent required under, and in accordance with, the Security Documents. The designation of any Subsidiary as an Electing Guarantor after the Effective Date shall constitute a return on any Investment by Holdings or any Restricted Subsidiary in such Subsidiary in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings' or its Restricted Subsidiaries' (as applicable) Investment in such Subsidiary. The designation of any Electing Guarantor as an Excluded Subsidiary shall constitute (i) an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings' or it or its respective Restricted Subsidiaries' (as applicable) Investment therein and (ii) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time.

SECTION 5.14 Certain Post-Closing Obligations. As promptly as practicable, and in any event within the time periods after the Effective Date specified in Schedule 5.14 or such later date as the Administrative Agent agrees to in writing in its reasonable discretion, including to reasonably accommodate circumstances unforeseen on the Effective Date, Holdings, the Borrower and each other Loan Party shall deliver the documents or take the actions specified on Schedule 5.14 that would have been required to be delivered or taken on the Effective Date, in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term "Collateral and Guarantee Requirement".

SECTION 5.15 Maintenance of Rating of Facilities. The Loan Parties shall use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any particular rating) from S&P and a public corporate family rating (but not any particular rating) from Moody's, in each case in respect of the Borrower and (ii) a public rating (but not any particular rating) in respect of the Initial Term Loans from each of S&P and Moody's.

SECTION 5.16 Lines of Business. Holdings and its Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, corollary, synergistic, reasonably related or ancillary to any of the foregoing.

SECTION 5.17 Fiscal Periods. Holdings will keep its current fiscal year; provided, however, that Holdings may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, 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 5.18 Lender Calls. Following delivery of the financial statements pursuant to each of Sections 5.01(a) and (b), at the reasonable request of the Administrative Agent, Holdings will host a conference call, at a time selected by Holdings and reasonably acceptable to the Administrative Agent, with the Lenders to review the financial information provided, in each case, therein.

## ARTICLE VI

### NEGATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Lenders that:

#### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Borrower and any of the Restricted Subsidiaries under the Loan Documents (including any Indebtedness incurred pursuant to Section 2.20 or 2.21);

(ii) Indebtedness, including intercompany Indebtedness, outstanding on the Effective Date; provided that any Indebtedness in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.01 (unless such Indebtedness is permitted by another clause in this Section 6.01), and any Permitted Refinancing thereof;

(iii) Guarantees by Holdings, the Borrower and any of the Restricted Subsidiaries in respect of Indebtedness of Holdings, the Borrower or any Restricted Subsidiary otherwise permitted hereunder; provided that (A) such Guarantee is permitted under Section 6.04 (other than Section 6.04(u)), (B) no Guarantee by any Restricted Subsidiary of the Second Lien Term Loans or any other Junior Financing ~~or Indebtedness that is unsecured and incurred under Section 6.01(a)(xv)~~ shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Loan Document Obligations pursuant to the Guarantee Agreement and (C) if the Indebtedness being Guaranteed is subordinated to the Loan Document Obligations, such Guarantee shall be subordinated to the Guarantee of the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(iv) Indebtedness of (x) Holdings owing to the Borrower or any other Restricted Subsidiary, (y) the Borrower owing to Holdings or any Restricted Subsidiary or (z) any Restricted Subsidiary owing to any other Restricted Subsidiary, Holdings or the Borrower, in each case, to the extent permitted by Section 6.04; provided that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be subordinated to the Loan Document Obligations (to the extent

any such Indebtedness is outstanding at any time after the date that is thirty (30) days after the Effective Date or such later date as the Administrative Agent may reasonably agree) (but only to the extent permitted by applicable law and not giving rise to adverse tax consequences (that are not de minimis)) on terms (i) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit F or (ii) otherwise reasonably satisfactory to the Administrative Agent;

(v) (A) Indebtedness (including Capital Lease Obligations and purchase money Indebtedness) incurred, issued or assumed by Holdings, the Borrower or any Restricted Subsidiary to finance the acquisition, purchase, lease, construction, repair, replacement or improvement of fixed or capital property, equipment or other assets; provided that such Indebtedness is incurred concurrently with or within 270 days after the applicable acquisition, purchase, lease, construction, repair, replacement or improvement, and (B) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clause (A) (or successive Permitted Refinancings thereof); provided, further, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed the greater of (A) \$22,500,000 and (B) 22.5% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(vi) Indebtedness in respect of Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(vii) (a) Indebtedness (1) of any Person acquired in connection with a Permitted Acquisition or permitted Investment or secured by any assets so acquired (and not incurred by the obligor thereon in contemplation of such Permitted Acquisition or permitted Investment) and (2) of any Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary (it being acknowledged that (x) a Person that becomes a direct or indirect Restricted Subsidiary of Holdings as a result of a Permitted Acquisition or permitted Investment may remain liable with respect to Indebtedness existing on the date of such acquisition (and not incurred in contemplation thereof) and (y) an Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary may remain liable with respect to Indebtedness existing on the date of such redesignation (and not incurred in contemplation thereof)); provided that at the time of incurrence, immediately after giving effect to such Permitted Acquisition, permitted Investment or redesignation, as the case may be, and the assumption of such Indebtedness, the Total Net Leverage Ratio computed on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00; and (b) in respect of the foregoing, any Permitted Refinancing thereof; provided, further, that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (vii) at the time of incurrence of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(viii) Indebtedness (a) to the seller of any business or assets acquired by Holdings or any Restricted Subsidiary in a transaction permitted hereunder (including Indebtedness to finance the payment of earnout obligations owing to such seller as a result of such transaction to the extent they become a liability on the consolidated balance sheet of Holdings and its Restricted Subsidiaries in accordance with GAAP, provided that (1) the Total Net Leverage Ratio computed on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00 and (2) if the primary obligor of such earnout is a Restricted Subsidiary that is not a Loan Party, the amount of such earnout shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time) or (b) indemnification obligations, obligations in respect of purchase price adjustments, incentive non-competes and other similar contingent obligations of deferred compensation incurred or assumed in connection with any Permitted Acquisition, any other Investment or any Disposition, in each case, permitted under this Agreement;

(ix) [reserved];

(x) [reserved];

(xi) Settlement Indebtedness;

(xii) Indebtedness in respect of (a) bankers' acceptances, discounted bills of exchange or discounting or factoring of receivables for credit management purposes incurred or undertaken in the ordinary course of business on arm's length commercial terms on a non-recourse basis and (b) Cash Management Obligations and other Indebtedness in respect of netting services, automated clearinghouse arrangements, overdraft protections and similar arrangements, in each case, in connection with securities or deposit accounts or from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiii) [reserved];

(xiv) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary after the Effective Date (or of any Person not previously a Restricted Subsidiary that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary); provided that, at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$40,000,000;

(xv) (A) unsecured Indebtedness of Holdings, the Borrower or any Subsidiary Loan Party or any Person that becomes a Loan Party after the Effective Date (or of any Person not previously a Subsidiary Loan Party that is merged, amalgamated or

consolidated with or into Holdings, the Borrower or any Restricted Subsidiary including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary so long as such Restricted Subsidiary becomes a Subsidiary Loan Party); provided that after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, such amount shall not exceed the sum of (I) (x) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case, incurred pursuant to clause (I)(a) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(x) of this Section 6.01(a)(xv) or of Section 6.01(a)(xvi) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(a) of the definition of “Incremental Cap” in the Second Lien Credit Agreement or clause (A)(I)(x) of Section 6.01(a)(xv) or clause (A)(I)(x) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (y) the Voluntary Prepayment Amount (less (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(b) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(y) of this Section 6.01(a)(xv) or of Section 6.01(a)(xvi) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(b) of the definition of “Incremental Cap” in the First Lien Credit Agreement or clause (A)(I)(y) of Section 6.01(a)(xv) or clause (A)(I)(y) of Section 6.01(a)(xvi) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (II) the maximum aggregate principal amount that can be incurred without causing the Total Net Leverage Ratio, on a Pro Forma Basis, to exceed 6.75 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Total Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established under this clause (xv), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower’s ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of “Pro Forma Basis” shall not be limited) and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A) so long as the obligors thereon do not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party; provided, further, that such Indebtedness complies with clauses (a), (b), (c), (d) and (f) of the definition of “Required Additional Debt Terms”; provided, further, that (x) Indebtedness may be incurred under both clauses (I) and (II), and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (II) above and then calculating the incurrence under clause (I)(y) and then calculating the incurrence under clause (I)(x) above) (if any) and, for the avoidance of doubt, the Total Net Leverage Ratio shall be permitted to exceed the maximum ratio set forth in clause (II) above to the extent of such amounts incurred in reliance on clause (I) at substantially the same time and (y) Indebtedness incurred pursuant to this clause (xv) by a non-Loan Party, together with Indebtedness incurred pursuant to clause (xvi) by a non-Loan Party, shall not exceed \$10,000,000 in the aggregate at any time outstanding;

(xvi) (A) Indebtedness of Holdings, the Borrower or any Subsidiary Loan Party or any Person that becomes a Subsidiary Loan Party after the Effective Date (or of any Person not previously a Subsidiary Loan Party that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Subsidiary Loan Party including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary so long as such Restricted Subsidiary becomes a Subsidiary Loan Party) that is secured on a pari passu or junior basis to the Initial Term Loans and the agent for such Indebtedness has become a party to the applicable Intercreditor Agreement; provided that after giving effect to the incurrence of such Indebtedness on a Pro Forma Basis, such amount shall not exceed the sum of (I) (x) an amount equal to the greater of \$100,000,000 and 100% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (*minus*, without duplication, (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(a) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(x) of this Section 6.01(a) (xvi) or of Section 6.01(a)(xv) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred in reliance on clause (I)(a) of the definition of “Incremental Cap” in the Second Lien Credit Agreement or clause (A)(I)(x) of Section 6.01(a) (xvi) or Section 6.01(a)(xv) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (y) the Voluntary Prepayment Amount (less (x) the amounts of all Incremental Facilities and Incremental Equivalent Debt, in each case incurred pursuant to clause (I)(b) of the definition of “Incremental Cap”, (y) all amounts previously incurred pursuant to clause (A)(I)(y) of this Section 6.01(a) (xvi) or of Section 6.01(a)(xv)) and (z) any Indebtedness incurred under Section 6.01(a)(xx)(i) to the extent such Indebtedness is incurred on reliance on clause (I)(b) of the definition of “Incremental Cap” in the Second Lien Credit Agreement or clause (A)(I)(y) of Section 6.01(a)(xvi) or of Section 6.01(a)(xv) of the Second Lien Credit Agreement (or any equivalent successor provision)), plus (II) in the case of Indebtedness secured on a pari passu basis with the Initial Term Loans, the maximum aggregate principal amount that can be incurred without causing the Senior Secured First Lien Net Leverage Ratio, on a Pro Forma Basis, to exceed 5.00 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Senior Secured First Lien Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established under this clause (xvi), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower’s ability to give pro forma effect to such repayment and all other adjustments contemplated by the definition of “Pro Forma Basis” shall not be limited) plus (III) in the case of Indebtedness secured on a junior basis to the Initial Term Loans, the maximum aggregate principal amount that can be incurred without causing the Senior Secured Net Leverage Ratio, on a Pro Forma Basis, to exceed 6.75 to 1.00 for the most recent Test Period ended (calculated without deducting from the numerator of such Senior Secured Net Leverage Ratio any cash proceeds of such Indebtedness and assuming that, in the case of any revolving facility being established under this clause (xvi), that all commitments with respect thereto were fully drawn; provided that to the extent the proceeds of any such Indebtedness are to be used to repay Indebtedness, the Borrower’s ability to give pro forma effect to such repayment and all other adjustments

contemplated by the definition of “Pro Forma Basis” shall not be limited)), and (B) any Permitted Refinancing of Indebtedness incurred pursuant to the foregoing subclause (A) so long as the obligors thereon do not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party; provided, further, that such Indebtedness complies with clauses (a), (b), (c), (d), (e), (f) and, to the extent applicable, (g) of the definition of “Required Additional Debt Terms”; provided, further, that (x) Indebtedness may be incurred under both clauses (I) and (II) or clauses (I) and (III) and proceeds from any such incurrence may be utilized in a single transaction by first calculating the incurrence under clause (I)(y) above and then calculating the incurrence under clauses (II) or (III) above, as applicable, and then calculating the incurrence under clause (I)(x) above) (if any) and, for the avoidance of doubt, the Senior Secured First Lien Net Leverage Ratio or Senior Secured Net Leverage Ratio, as applicable, shall be permitted to exceed the maximum ratio set forth in clause (II) or (III) above to the extent of such amounts incurred in reliance on clause (I) at substantially the same time and (y) Indebtedness incurred pursuant to this clause (xvi) by a non-Loan Party, together with Indebtedness incurred pursuant to clause (xv) by a non-Loan Party, shall not exceed \$10,000,000 in the aggregate at any time outstanding;

(xvii) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary in an aggregate principal amount not greater than the Available Equity Amount that is Not Otherwise Applied at the time of incurrence;

(xviii) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case of the foregoing clauses (A) and (B), in the ordinary course of business;

(xix) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

~~(xx) Indebtedness of the Borrower (and any Guarantee thereof by any Loan Party), incurred in respect of:~~

~~(i) any Second Lien Term Loans and Second Lien Permitted Incremental Equivalent Debt in an aggregate principal amount outstanding at any time not to exceed (x) \$185,000,000 plus (y) the aggregate principal amount of Indebtedness that is outstanding or that would be permitted to be incurred as an “Incremental Facility” under and as defined in the Second Lien Credit Agreement as in effect on the date hereof (or, in each case, pursuant to any corresponding provision in any Permitted Refinancing thereof to the extent such corresponding provision does not permit an aggregate principal amount of Indebtedness in excess of an amount permitted under the Second Lien Credit Agreement (as in effect on the Effective Date)); and~~

~~(xx) (ii) any Permitted Refinancing thereof so long as the aggregate principal amount of Indebtedness does not exceed the aggregate principal amount of Indebtedness being refinanced, plus (1) an amount equal to unpaid accrued interest and~~

~~premiums (including tender premiums) thereon, plus (2) the amount of any underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant Permitted Refinancing, plus (3) an amount equal to any existing commitments unutilized thereunder, plus (4) any additional principal amount of Indebtedness in connection with such Permitted Refinancing (without giving effect to the proviso in clause (a) of the definition thereof) to the extent such principal amount constitutes Credit Agreement Refinancing Indebtedness (as defined in the Second Lien Credit Agreement as in effect on the Effective Date), but only to the extent the amount of such refinancing exceeds the refinanced Indebtedness in accordance with the Second Lien Credit Agreement as in effect at the Effective Date)), provided that, in the case of any Permitted Refinancing, the obligors thereon shall not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party; [Reserved];~~

(xxi) Permitted Unsecured Refinancing Debt, and any Permitted Refinancing thereof; provided that (A) in the case of any Permitted Unsecured Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt, the obligor thereon shall be the Borrower and (B) in the case of any Permitted Refinancing of any Permitted Unsecured Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party; provided, further, that in the case of any Permitted Unsecured Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt (or any Permitted Refinancing thereof), such Indebtedness shall comply with clauses (c) and (e) of the definition of “Credit Agreement Refinancing Indebtedness”;

(xxii) Permitted First Priority Refinancing Debt and Permitted Junior Priority Refinancing Debt, and any Permitted Refinancing of any of the foregoing; provided that (A) in the case of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt, the obligor thereon shall be the Borrower and (B) in the case of any Permitted Refinancing of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party; provided, further, that in the case of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt that constitutes a Permitted Refinancing of Incremental Equivalent Debt (or any Permitted Refinancing thereof), such Indebtedness shall comply with clauses (c), (d) and (e) of the definition of “Credit Agreement Refinancing Indebtedness”;

(xxiii) Indebtedness of the Borrower issued in lieu of Incremental Facilities (and including, for the avoidance of doubt, if applicable, any such Indebtedness that is also issued in lieu of “Incremental Facilities” as defined in the Second Lien Credit Agreement) consisting of one or more series of secured or unsecured loans, bonds, notes or debentures (which loans, bonds, notes or debentures, if secured, may be secured either by Liens pari passu with the Liens on the Collateral securing the Initial Term Loans (but without regard to control of remedies) or by Liens having a junior priority relative to the Liens on the Collateral securing the Initial Term Loans) (and any Registered Equivalent



Notes issued in exchange therefor) (the “Incremental Equivalent Debt”); provided that (x) the aggregate principal amount of all such Indebtedness incurred pursuant to this clause (xxiii) shall not exceed, at the time of incurrence, the Incremental Cap at such time, and (y) such Indebtedness complies with the provisions of the Required Additional Debt Terms;

(xxiv) Indebtedness of any Restricted Subsidiary that is not a Loan Party in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$20,000,000 and (B) 20% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(xxv) Indebtedness incurred by Holdings, the Borrower or any Restricted Subsidiary in respect of letters of credit, bank guarantees, warehouse receipts, bankers’ acceptances or similar instruments issued or created in the ordinary course of business or consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other indemnification or reimbursement-type obligations;

(xxvi) obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Holdings, 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 past practice;

(xxvii) Indebtedness representing deferred compensation or stock-based compensation owed to employees of Holdings, the Borrower or the Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice;

(xxviii) Indebtedness consisting of unsecured promissory notes issued by Holdings, the Borrower or any Restricted Subsidiary to future, current or former officers, directors, employees, managers and consultants or their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of Holdings (or any Holdings Parent) to the extent permitted by Section 6.07(a)(v);

(xxix) Indebtedness incurred in connection with a Qualified Securitization Facility [in an aggregate amount not to exceed \\$20,000,000 at any time outstanding](#);

(xxx) Indebtedness of any Restricted Subsidiary that is a joint venture in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(xxxi) endorsement of instruments or other payment items for deposit in the ordinary course of business;

(xxxii) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Restricted Subsidiaries;

(xxxiii) performance Guarantees of Holdings and the Restricted Subsidiaries primarily guaranteeing performance of contractual obligations of Holdings or Restricted Subsidiaries to a third party and not primarily for the purpose of guaranteeing payment of Indebtedness;

(xxxiv) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of Holdings to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States; and

(xxxv) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxiv) above;

provided, that any Junior Financing, that is incurred pursuant to clauses (a)(i) through (a)(xxxv) above shall not be permitted to require any cash payments of principal or interest prior to the Term Maturity Date that is in effect at the time such Indebtedness is incurred.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, issue any Disqualified Equity Interests, except (x) to the extent incurred as Indebtedness under Section 6.01(a) and (y) (i) preferred Equity Interests issued to and held by Holdings, the Borrower or any Restricted Subsidiary to the extent permitted by Section 6.04, and (ii) preferred Equity Interests issued to and held by joint venture partners after the Effective Date; provided that in the case of this clause (ii) any such issuance of preferred Equity Interests shall be deemed to have been incurred Indebtedness and subject to the provisions set forth in Section 6.01(a) and (b).

For purposes of determining compliance with this Section 6.01, (i) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Indebtedness described in clauses (a)(i) through (a)(xxxv) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; provided that (i) all Indebtedness outstanding under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (a)(i), (ii) all Indebtedness outstanding under the Second Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (a)(xx)(A) and (iii) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Indebtedness that was not permitted to be incurred at the initial incurrence thereof.

For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness).

Notwithstanding anything in this Section 6.01 to the contrary, from and after May 23, 2020, Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, incur any Indebtedness that is secured by the Collateral on a *pari passu* basis with the Initial Term Loans prior to the date that the financial statements required pursuant to Section 5.01(b) have been delivered to the Administrative Agent with respect to the fiscal quarter ending June 30, 2020.

#### SECTION 6.02 Liens.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned (but not leased) or hereafter acquired (but not leased) by it, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Encumbrances;

(iii) Liens existing on the Effective Date; provided that any Lien securing Indebtedness or other obligations in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.02 (unless such Lien is permitted by another clause in this Section 6.02) and any modifications, replacements, renewals or extensions thereof; provided, further, that such modified, replacement, renewal or extension Lien does not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); provided that (A) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for replacements, additions,

accessions and improvements to such property and the proceeds and the products thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for replacements, additions, accessions and improvements to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; provided, further, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) (i) easements, leases, licenses, subleases or sublicenses granted to others (including licenses and sublicenses of Intellectual Property) in the ordinary course of business that do not (A) interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole, or (B) secure any Indebtedness and (ii) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease or license entered into by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of its business or consistent with past practice;

(vi) 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;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (B) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or (C) in favor of a banking or other financial institution or entity, or electronic payment service provider, arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking or finance industry;

(viii) Liens (A) on cash advances, cash earnest money deposits or other escrow deposits in connection with any Investment permitted pursuant to Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) Liens on property or other assets of any Restricted Subsidiary that is not a Loan Party, which Liens secure Indebtedness of such Restricted Subsidiary or another Restricted Subsidiary that is not a Loan Party, in each case permitted under Section 6.01(a).(other than with respect to Indebtedness permitted under Section 6.01(a)(iii));

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any other Restricted Subsidiary and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) Liens existing on property or other assets at the time of its acquisition or existing on the property or other assets of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date and any modifications, replacements, renewals or extensions thereof; provided that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary and (B) such Lien does not extend to or cover any other assets or property (other than any replacements of such property or assets and additions and accessions thereto, the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, and proceeds or products thereof and, in the case of multiple equipment financings provided by any lender, other equipment financed by such lender);

(xii) Liens on cash, Permitted Investments or other marketable securities securing Letters of Credit of any Loan Party that are cash collateralized on the Effective Date in an amount of cash, cash equivalents or other marketable securities with a fair market value of up to 105% of the face amount of such Letters of Credit being secured;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term “Permitted Investments”;

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries or (B) relating to purchase orders and other agreements entered into with customers of Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xvii) ground leases in respect of real property on which facilities owned or leased by Holdings, the Borrower or any of the Restricted Subsidiaries are located; (xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Liens on the Collateral securing Indebtedness and other obligations permitted under Section 6.01(a)(xvi), Section 6.01(a)(xx), Section 6.01(a)(xxii) or Section 6.01(a)(xxiii); provided that (A) such Liens securing Indebtedness permitted

under Section 6.01(a)(xx) and 6.01(a)(xx)(ii) (solely in the case of Permitted Junior Priority Refinancing Debt) shall be junior to the Liens on the Collateral securing the Initial Term Loans pursuant to the Closing Date Intercreditor Agreement and (B) in all cases such Liens shall be subject to the applicable Intercreditor Agreement;

(xx) [reserved];

(xxi) Settlement Liens;

(xxii) Liens on the Collateral securing Indebtedness permitted under Section 6.01(a)(viii) ~~or (xxi)~~ (so long as such Liens are subordinated to the Liens securing the Initial Term Loans pursuant to a Junior Intercreditor Agreement);

(xxiii) Liens on assets of any Restricted Subsidiary that is not a Loan Party (x) securing working capital lines in foreign jurisdictions and/or (y) securing other obligations, in each case of such Restricted Subsidiary or any other Restricted Subsidiary that is not a Loan Party and to the extent such Indebtedness is permitted by Section 6.01;

(xxiv) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; provided such satisfaction or discharge is permitted hereunder;

(xxv) Receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxvi) Liens on Equity Interests of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

(xxvii) [reserved];

(xxviii) other Liens; provided that, at the time of the granting thereof and after giving Pro Forma Effect thereto, the aggregate amount of obligations secured by all Liens incurred in reliance on this clause (xxviii) shall not exceed \$30,000,000 (provided that, with respect to any such obligation, the amount of such obligation shall be the lesser of (x) the outstanding face amount of such obligation and (y) the fair market value of the assets securing such obligation);

(xxix) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xxx) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters for 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;

(xxxvi) Liens of bailees arising as a matter of law or pursuant to the standard terms of agreement of such bailee in the ordinary course of business; provided that such Liens shall extend only to the assets subject to such bailment;

(xxxvii) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of Holdings and its Subsidiaries;

(xxxviii) utility and similar deposits in the ordinary course of business;

(xxxix) purchase options, call and similar rights of, and restrictions for the benefit of, a third party with respect to Equity Interests held by Holdings or any Restricted Subsidiary in Joint Ventures;

(xl) Liens in favor of Holdings or a Loan Party arising in connection with Intercompany License Agreements;

(xli) Liens on cash or Permitted Investments securing any Swap Agreement (or any obligations in respect of the clearing thereof) so long as the fair market value of the assets securing such Swap Agreement does not exceed the greater of (A) \$7,500,000 and (B) 7.5% of Consolidated EBITDA for the Test Period then last ended at any time;

(xlii) without duplication of any other permitted Lien item under this Section 6.02, minor survey exceptions, minor encumbrances, ground leases, easements, or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines, and other similar purposes, or zoning, building codes, or other restrictions (including, without limitation, 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 a Loan Party or to the ownership of its properties which were not incurred in connection with Indebtedness for borrowed money and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Loan Party;

(xliii) restrictive covenants affecting the use to which real property may be put; provided that such covenants are complied with;

(xliv) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; and

(xlv) any Lien resulting from the rules and regulations of any clearing system or stock exchange over shares and/or other securities held in that clearing system or stock exchange.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxxviii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; provided that (x) all Liens created under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (i), (y) all Liens created under the Second Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (xix) and (z) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Lien that was not permitted to be incurred at the initial incurrence thereof.

SECTION 6.03 Fundamental Changes; Holdings Covenant.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or liquidate or dissolve (which, for the avoidance of doubt, shall not restrict Holdings, the Borrower or any Restricted Subsidiary from changing its organizational form), except that:

(i) any Restricted Subsidiary (other than the Borrower) may merge, amalgamate or consolidate with (A) the Borrower or Holdings; provided that the Borrower or Holdings shall be the continuing or surviving Person, or (B) any one or more Restricted Subsidiaries (other than the Borrower); provided, further, that when any Subsidiary Loan Party is merging, amalgamating or consolidating with another Restricted Subsidiary (1) the continuing or surviving Person shall be a Subsidiary Loan Party or the Borrower or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is otherwise permitted under Section 6.04;

(ii) (A) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any Restricted Subsidiary that is not a Loan Party and (B) (x) any Restricted Subsidiary (other than the Borrower) may liquidate or dissolve and (y) any Restricted Subsidiary may change its legal or organizational form if, in the case of either preceding clause (x) or (y), the Borrower determines in good faith that such action is in the best interests of Holdings and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary (other than the Borrower) may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Holdings, the Borrower or another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the



Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(iv) the Borrower may merge, amalgamate 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 Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower or is a Person into which the Borrower has been liquidated (or, in connection with a Disposition of all or substantially all of the Borrower's assets, if the transferee of such assets) (any such Person, the "Successor Borrower"), (1) the Successor Borrower shall be an entity organized or existing under the laws of the United States (or any state thereof), (2) the Successor Borrower shall expressly assume all of 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 and substance reasonably satisfactory to the Administrative Agent, (3) each Loan Party other than the Borrower, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Borrower's obligations under this Agreement and (4) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower stating that such merger, amalgamation or consolidation complies with this Agreement; provided, further, that (y) if such Person is not a Loan Party, no Event of Default (or, to the extent related to a Permitted Acquisition or any Investment not prohibited by Section 6.04, no Specified Event of Default) shall exist after giving effect to such merger, amalgamation or consolidation and (z) if the foregoing requirements are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents; provided, further, that (A) the Borrower shall have provided any documentation and other information about the Successor Borrower to the extent reasonably requested in writing promptly, and in any case within one (1) Business Day following the delivery of the certificate in clause (4), by any Lender or Issuing Bank through the Administrative Agent, or by the Administrative Agent, that such Lender, Issuing Bank or Administrative Agent, as applicable, shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including Title III of the USA PATRIOT Act and (B) such Lender, Issuing Bank or Administrative Agent, as applicable, shall be reasonably satisfied that its review of such documentation and information requested and delivered pursuant to clause (A) complies with such applicable "know your customer" and anti-money laundering rules and regulations (provided that for the avoidance of doubt, the Borrower's failure to deliver information requested after the first Business Day following delivery of the certificate in clause (4) above shall not constitute a Default or an Event of Default under this Agreement or the Loan Documents);

(v) any Restricted Subsidiary (other than the Borrower) may merge, consolidate or amalgamate with any other Person in order to effect an Investment

permitted pursuant to Section 6.04; provided that the continuing or surviving Person shall be the Borrower or a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12;

(vi) Holdings, the Borrower and the Restricted Subsidiaries may consummate the Transactions and any Permitted Reorganization; and

(vii) any Restricted Subsidiary (other than the Borrower) may effect a merger, amalgamation, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05.

(b) Holdings will not conduct, transact or otherwise engage in any business or operations other than (i) the ownership and/or acquisition of the Equity Interests or debt interests of the Borrower and any other Subsidiary, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters, (iv) the performance of its obligations under and in connection with (w) the Loan Documents, (x) the Second Lien Loan Documents, (y) any documentation governing any other Indebtedness or Guarantee permitted hereunder and (z) any Permitted Reorganization, (v) any public offering of its or any of its direct or indirect parent's common stock or any other issuance or registration of its Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, (vi) making any dividend or distribution or other transaction similar to a Restricted Payment and not otherwise prohibited by Section ~~6.08~~6.07, or any Investment in the Borrower or any other Person permitted under Section 6.04, (vii) the incurrence of any Indebtedness permitted under Section 6.01, (viii) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (ix) providing indemnification to officers and members of the Board of Directors, (x) activities incidental to the consummation of the Transactions and (xi) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

#### SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made and purchases of assets in the ordinary course of business consistent with past practice;

(b) loans or advances to officers, members of the Board of Directors and employees of Holdings, the Borrower and the Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof) (provided that the amount of such loans and advances made in cash to such Person shall be contributed to Holdings in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding at any time not to exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended;

(c) Investments by Holdings in the Borrower or any Restricted Subsidiary, Investments by the Borrower in Holdings or any Restricted Subsidiary and Investments by any Restricted Subsidiary in Holdings, the Borrower or any other Restricted Subsidiary; provided that, Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties, when taken together with any Investments made pursuant to Section 6.04(1)(y) shall not exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended in the aggregate at the time of making any such Investment;

(d) Investments consisting of extensions of trade credit and accommodation guarantees in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 6.04 and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the Effective Date by Holdings, the Borrower or any Restricted Subsidiary in Holdings, the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; provided that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04 or as otherwise permitted by this Section 6.04;

(f) Investments in Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(h) Investments constituting Permitted Acquisitions, provided that the aggregate amount of any such Investment, as valued at the fair market value at the time such Investment is made, made by a Loan Party in a Restricted Subsidiary that shall not be a Loan Party (or in the case of any acquisition of assets, if such acquired assets are not owned by a Loan Party) after giving effect to such Permitted Acquisition shall not exceed the greater of (A) \$30,000,000 and (B) 30% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;

(i) the Transactions;

(j) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers in the ordinary course of business;

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(l) loans and advances to any Holdings Parent (x) 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 to such Holdings Parent in accordance with Section 6.07(a) (other than Section 6.07(a)(xvii)(2)) with such Investment being treated for purposes of the applicable clauses of Section 6.07(a), including any limitations, as a Restricted Payment made pursuant to such clause, and (y) to the extent the proceeds thereof are contributed or loaned or advanced to Holdings or a Restricted Subsidiary, (provided, that such contributions, loans or advances pursuant to this clause (y) to Restricted Subsidiaries that are not Loan Parties shall not, when taken together with Investments made pursuant to Section 6.04(c) in Restricted Subsidiaries that are not Loan Parties, exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended in the aggregate at the time of making any such Investment);

(m) additional Investments and other acquisitions; provided that at the time any such Investment or other acquisition is made, the aggregate outstanding amount of such Investment or acquisition made in reliance on this clause (m), together with the aggregate amount of all consideration paid in connection with all other Investments and acquisitions made in reliance on this clause (m) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other Investment or acquisition previously made under this clause (m)), shall not exceed (i) \$35,000,000 plus (ii) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment, plus (iii) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment plus (iv) an unlimited amount so long as on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.75 to 1.00 for the most recently ended Test Period as of such time;

(n) advances of payroll payments to employees in the ordinary course of business;

(o) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as Cure Amounts and Qualified Equity Interests that are applied pursuant to the Available Amount or the Available Equity Amount) of Holdings or any Holdings Parent;

(p) Investments of a Subsidiary acquired after the Effective Date or of a Person merged, amalgamated or consolidated with any Subsidiary in accordance with this Section 6.04 and Section 6.03 after the Effective Date or that otherwise becomes a Subsidiary (provided that if such Investment is made under Section 6.04(h), existing Investments in subsidiaries of such Subsidiary or Person shall comply with the requirements of Section 6.04(h)) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(q) receivables owing to Holdings, the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(r) Investments (A) for utilities, security deposits, leases and similar prepaid expenses incurred in the ordinary course of business and (B) trade accounts created, or prepaid expenses accrued, in the ordinary course of business;

(s) any Permitted Reorganization and any Investments in connection therewith;

(t) [reserved];

(u) Investments consisting of Indebtedness, Liens, fundamental changes, Dispositions and Restricted Payments permitted (other than by reference to this Section 6.04(u)) under Sections 6.01, 6.02, 6.03, 6.05 (other than Section 6.05(e)(i)) and 6.07, respectively;

(v) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of Holdings or the Borrower;

(w) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case in the ordinary course of business;

(x) any Investment in any [Restricted](#) Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities, in each case, arising in the ordinary course of business;

(y) Investments made by an Unrestricted Subsidiary (other than Investments made with the proceeds of Investments made in reliance on Section 6.04(bb)) prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”;

(z) 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 or any repurchase obligation in connection therewith, including, without limitation, Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Facilities or any related Indebtedness;

(aa) Investments in the ordinary course of business in connection with Settlements;

(bb) Investments in any Unrestricted Subsidiaries, joint ventures and Persons which do not become Loan Parties as a result of such Investment in an amount not to exceed the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;

(cc) [reserved];

(dd) asset purchases (including purchases of inventory, supplies and materials) and the granting of non-exclusive licenses or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;

(ee) [reserved];

(ff) Investments in connection with Intercompany License Agreements;

(gg) Investments consisting of cash earnest money deposits permitted pursuant to Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition);

(hh) to the extent that the exchange of cash by the Borrower or any other Restricted Subsidiary for the provision of services in the ordinary course of business by a Restricted Subsidiary constitutes an Investment, the payment for such provision of services or provision of such services; and

(ii) Any Discounted Term Loan Prepayment or other Term Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04 and any Discounted Term Loan Prepayment (as defined in the Second Lien Credit Agreement) or other Second Lien Term Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04 of the Second Lien Credit Agreement (for any comparable provision of a Permitted Refinancing thereof), so long as such loans are immediately cancelled.

For the avoidance of doubt, if an Investment would be permitted under any provision of this Section 6.04 (other than Section 6.04(h)) and as a Permitted Acquisition, such Investment need not satisfy the requirements otherwise applicable to a Permitted Acquisition unless such Investments are consummated in reliance on Section 6.04(h). In addition, to the extent an Investment is permitted to be made by Holdings or a Restricted Subsidiary directly in any Restricted Subsidiary or any other Person who is not a Loan Party (each such person, a “Target Person”) under any provision of this Section 6.04, such Investment may be made by advance, contribution or distribution directly or indirectly to a Holdings Parent and further advanced or contributed substantially simultaneously by such Holdings Parent to a Loan Party or other Restricted Subsidiary for purposes of ultimately making the relevant Investment in the Target Person without constituting an Investment for purposes of Section 6.04 (it being understood that such Investment must satisfy the requirements of, and shall count toward any thresholds or baskets in, the applicable clause under Section 6.04 as if made by the applicable Restricted Subsidiary directly to the Target Person).

For purposes of determining compliance with this Section 6.04, in the event that an Investment (or any portion thereof) meets the criteria of more than one of the categories of Investments described in clauses (a) through (ii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) and will only be required to include the amount and type of such Investment in one or more of the above clauses; provided that no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Investment that was not permitted to be made at the initial making thereof.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, (i) sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors' qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or any Restricted Subsidiary in compliance with Section 6.04(c)) (each, a "Disposition" and the term "Dispose" as a verb has the corresponding meaning), except:

(a) Dispositions of obsolete, damaged, used, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful, or economically practicable or commercially desirable to maintain, in the conduct of the business of Holdings and any Restricted Subsidiary (including by ceasing to enforce or allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any Intellectual Property that is, in the reasonable judgment of Holdings, the Borrower or the Restricted Subsidiaries, no longer used or useful, or economically practicable or commercially desirable to maintain, or in respect of which Holdings, the Borrower or any Restricted Subsidiary determines in its reasonable business judgment that such action or inaction is desirable);

(b) Dispositions (including discounts) of inventory and other assets (including Settlement Assets and notes receivable) in the ordinary course of business and immaterial assets (considered in the aggregate) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property (or a functional equivalent of such property) or (ii) an amount equal to Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property (or a functional equivalent of such property);

(d) Dispositions of property to Holdings, the Borrower or any Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(e) To the extent constituting Dispositions, transactions permitted by (i) Section 6.03, (ii) Section 6.04 (other than Section 6.04(u)), (iii) Section 6.07 and (iv) Section 6.02;

(f) Dispositions of property acquired by Holdings, the Borrower or any of the Restricted Subsidiaries after the Effective Date pursuant to sale-leaseback transactions;

(g) Dispositions of Permitted Investments;

(h) Dispositions or forgiveness of accounts receivable in connection with the collection or compromise thereof (including sales to factors or other third parties);

(i) leases, subleases, service agreements, product sales, transfers, licenses or sublicenses (including transfers and licenses and sublicenses of Intellectual Property), in each case that do not materially interfere with the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;

(j) transfers of property subject to Casualty Events;

(k) Dispositions of property to Persons other than Restricted Subsidiaries (including the sale or issuance of Equity Interests of a Restricted Subsidiary) for fair market value (as determined by a Responsible Officer of the Borrower in good faith) not otherwise permitted under this Section 6.05 (other than a Disposition of all or substantially all assets of Holdings and the Restricted Subsidiaries); provided that (i) with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of \$10,000,000, Holdings, the Borrower or such Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Permitted Investments; provided, however, that solely for the purposes of this clause (k), (A) any liabilities (as shown on the most recent balance sheet of Holdings, the Borrower or such Restricted Subsidiary or in the footnotes thereto) of Holdings, the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Loan Document Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which Holdings, the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, shall be deemed to be cash, (B) any securities, notes or other obligations or assets received by Holdings, the Borrower or such Restricted Subsidiary from such transferee that are converted by Holdings, the Borrower or such Restricted Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received) within one hundred and eighty (180) days following the closing of the applicable Disposition, shall be deemed to be cash, (C) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Disposition (other than intercompany debt owed to Holdings or its Restricted Subsidiaries), to the extent that Holdings, the Borrower and all of the Restricted Subsidiaries (to the extent previously liable thereunder) are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Disposition, shall be deemed to be cash, (D) any Designated Non-Cash Consideration received by Holdings, the Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate fair market value (as determined by a Responsible Officer of the Borrower in good faith), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (k) that is at that time outstanding, not



in excess of \$15,000,000 at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value (as determined by a Responsible Officer of the Borrower in good faith) of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash and (E) consideration received in connection with an asset swap shall be deemed “cash”, and (ii) at the time of the execution of a binding agreement in respect of and immediately after giving effect to such Disposition, no Default or Event of Default shall have occurred and be continuing;

(l) Dispositions of Investments in joint ventures or non-wholly owned Subsidiaries 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;

(m) Dispositions of any assets not constituting Collateral hereunder, provided that the aggregate fair market value (as determined in good faith by the Borrower) of all such Dispositions, in the aggregate, shall not be in excess of the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA at the time of such Disposition;

(n) Dispositions of any assets (including Equity Interests) (A) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of Holdings, the Borrower and the Restricted Subsidiaries; provided that the fair market value of such assets shall not exceed 25% of the consideration paid in such Permitted Acquisition or Investment or (B) made to obtain the approval of any applicable antitrust authority in connection with the Transactions;

(o) (i) any Disposition of accounts receivable, Securitization Assets, any participations thereof, or related assets in connection with or any Qualified Securitization Facility or ~~(iii)~~ the conversion of accounts receivable to notes receivable;

(p) transfers of condemned real property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of real property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(q) Dispositions constituting any part of a Permitted Reorganization;

(r) Dispositions to Persons other than Loan Parties of Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are Permitted Investments received from Holdings or a Restricted Subsidiary) or assets acquired from Unrestricted Subsidiaries;

(s) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value of usefulness to the business of Holdings and its Restricted Subsidiaries, taken as a whole, as determined in good faith by the Borrower; provided that the aggregate fair market value (as determined in good faith by the Borrower) of all assets constituting Collateral that are exchanged for other assets not constituting Collateral pursuant to this clause (s) shall not exceed the greater of (x) \$10,000,000 and (y) 10% of Consolidated EBITDA at the time of such swap of assets;

(t) other Dispositions in an aggregate amount not in excess of the greater of (x) \$10,000,000 and (y) 11.5% of Consolidated EBITDA ~~at the~~ at the time of such Disposition;

(u) samples, including time-limited evaluation software, provided to customers or prospective customers;

(v) de minimis amounts of equipment or other assets provided to employees; (w) the unwinding of any Cash Management Obligations or Swap Agreement pursuant to its terms;

(x) sales, transfers, leases or other dispositions to or by Holdings or a Restricted Subsidiary pursuant to Intercompany License Agreements; and

(y) Holdings and any Restricted Subsidiary may (i) terminate or otherwise collapse its cost sharing agreements with Holdings or any Restricted Subsidiary and settle any crossing payments in connection therewith, (ii) convert any intercompany Indebtedness to Equity Interests, (iii) transfer any intercompany Indebtedness to Holdings or any Restricted Subsidiary, (iv) settle, discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by Holdings or any Restricted Subsidiary, (v) settle, discount, write off, forgive or cancel any Indebtedness owing by any present or former consultants, directors, officers or employees, Holdings or any Restricted Subsidiary or any of their successors or assigns or (vi) surrender or waive contractual rights and settle or waive contractual or litigation claims.

SECTION 6.06 ~~Reserved~~ Material IP. All Intellectual Property that is, individually or in the aggregate, material to the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, must be owned or otherwise held by a Loan Party; provided, that if any such Intellectual Property is acquired by Holdings or any Subsidiary of Holdings pursuant to a Permitted Acquisition or other permitted Investment, the Loan Parties shall have ninety (90) days after such acquisition to comply with this Section 6.06.

SECTION 6.07 Restricted Payments; Certain Payments of Indebtedness.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, declare or make any Restricted Payment, except:

(i) the Borrower and each Restricted Subsidiary may make Restricted Payments to Holdings, the Borrower or any Restricted Subsidiary, provided that in the case of any such Restricted Payment by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, such Restricted Payment is made to Holdings, the Borrower, any Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary pro rata based on their relative ownership interests of the relevant class of Equity Interests;

(ii) Holdings, the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;

(iii) Restricted Payments made to consummate the Transactions and Restricted Payments constituting any part of a Permitted Reorganization;

(iv) repurchases of Equity Interests in any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price or withholding taxes payable in connection with the exercise of such options or warrants or other incentive interests;

(v) Restricted Payments to any Holdings Parent, which such Holdings Parent may use to redeem, acquire, retire, repurchase or settle its Equity Interests (or any options, warrants, restricted stock or stock appreciation rights or similar securities issued with respect to any such Equity Interests) or Indebtedness or to service Indebtedness incurred by a Holdings Parent to finance the redemption, acquisition, retirement, repurchase or settlement of such Equity Interest or Indebtedness, held directly or indirectly by current or former officers, managers, consultants, members of the Board of Directors, employees or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement in an aggregate amount after the Effective Date together with the aggregate amount of loans and advances to any Holdings Parent made pursuant to Section 6.04(l) in lieu of Restricted Payments permitted by this clause (v) not to exceed \$10,000,000 in any fiscal year (\$20,000,000 after consummation of an IPO) with unused amounts in any fiscal year being carried over to the next succeeding calendar year (subject to a maximum of \$20,000,000 (\$50,000,000 after consummation of an IPO) in any calendar year) (without giving effect to the following proviso); provided that such amount in any fiscal year may be increased by (1) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower, Holdings (or by any Holdings Parent and contributed to Holdings) or the Restricted Subsidiaries after the Effective Date, or (2) the amount of any bona fide cash bonuses otherwise payable to members of the Board of Directors, consultants, officers, employees, managers or independent contractors of any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year; provided, further, that cancellation of Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary from members of the Board of Directors, consultants, officers, employees, managers or independent contractors (or their respective spouses, former

spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of a Holdings Parent, Holdings or the Borrower will not be deemed to constitute a Restricted Payment for purposes of this Section 6.07 or any other provisions of this Agreement;

(vi) [reserved];

(vii) Holdings, the Borrower or a Restricted Subsidiary may make Restricted Payments in cash or Permitted Investments to any Holdings Parent, Holdings, the Borrower or another Restricted Subsidiary, as applicable:

(A) as direct or indirect distributions by Holdings, the Borrower or any Restricted Subsidiary to the direct or indirect holders of the equity interests of Holdings, the Borrower or such Restricted Subsidiary for the purposes of (1) permitting such holders to pay such holders' respective United States federal, state or local Tax obligations with respect to the taxable income, revenue, receipts, gross receipts, gross profits, capital or margin of Holdings, the Borrower and/or its Subsidiaries that is attributed to such direct or indirect holder as a result of its ownership of such equity interests with respect to such taxable period at the maximum marginal federal, state, and local income tax rate in any jurisdiction in the United States for a taxable corporation or individual (whichever is applicable) (taking into account the deductibility of state and/or local income taxes for U.S. federal income tax purposes (and any limitations thereon), any adjustments arising by reason of an election made pursuant to Code Section 754, any cumulative net taxable loss of Holdings, the Borrower and/or its Subsidiaries for prior taxable periods to the extent such loss is of a character that would allow such loss to be available to such equity holder to reduce any taxes of such equity holder in the current taxable period, the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and the need to make such distributions on a pro rata basis) (collectively, "Tax Distributions") and (2) making "catch-up" payments on any applicable high yield discount obligations;

(B) the proceeds of which shall be used by a Holdings Parent to pay (or to make Restricted Payments to allow any direct or indirect parent of such Holdings Parent to pay) (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (2) any reasonable and customary indemnification claims made by members of the Board of Directors or officers, employees, directors, managers, consultants or independent contractors of any Holdings Parent attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due and payable by Holdings,

the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by Holdings, the Borrower and any Restricted Subsidiaries under this Agreement, (4) to the extent constituting a Restricted Payment, management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses (including indemnity obligations) payable to the Sponsor or any equity holder of Holdings or a Holdings Parent not to exceed \$2,500,000 in any fiscal year and (5) to satisfy indemnity obligations under agreements in respect of Permitted Acquisitions and (6) amounts that would otherwise be permitted to be paid pursuant to Section 6.08(iii) as it relates to this Transaction, (viii) or (xiv);

(C) the proceeds of which shall be used by a Holdings Parent, Holdings, the Borrower or a Subsidiary to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(D) to finance any Investment made by a Holdings Parent that, if made by Holdings or the Borrower, would be permitted to be made pursuant to Section 6.04; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such Holdings Parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests but not including any loans or advances made pursuant to Section 6.04(b)) to be contributed to Holdings or its Restricted Subsidiaries or (2) the Person formed or acquired to merge into or amalgamate or consolidate with Holdings, the Borrower or any of the Restricted Subsidiaries to the extent such merger, amalgamation or consolidation is permitted in Section 6.03) in order to consummate such Investment, in each case in accordance with the requirements of Sections 5.11 and 5.12;

(E) the proceeds of which shall be used to pay (or to make Restricted Payments to allow a Holdings Parent to pay) fees and expenses related to any actual or proposed equity or debt offering not prohibited by this Agreement and advisory, refinancing, transaction and exit fees and expenses attributable to the business of Holdings and the Restricted Subsidiaries;

(F) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any Holdings Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of Holdings, the Borrower and the Restricted Subsidiaries; and

(G) the proceeds of which shall be used to make payments permitted by clause (b)(iv) (with such Restricted Payment being treated for purposes of such clause (b)(iv), including any limitations, as a payment made pursuant to such clause (b)(iv) ~~and (b)(v)~~ of Section 6.07;

(viii) in addition to the foregoing Restricted Payments, Holdings may make additional Restricted Payments, in an aggregate amount not to exceed the sum of (A) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment, plus (B) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment; provided that any amounts included in clause (b) of the definition of “Available Amount” may only be used for Restricted Payments so long as (i) no Default shall have occurred and be continuing at the time of declaration of such Restricted Payment and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00 for the most recently ended Test Period as of such time;

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; provided that such new Equity Interests constitute Qualified Equity Interests and contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) [reserved];

(xi) payments to any Holdings Parent to permit it to (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) payments made or expected to be made by any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in respect of withholding or similar Taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, manager or consultant (or their respective controlled Affiliates or permitted transferees) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or required withholding or similar Taxes;

(xiii) the distribution, by dividend or otherwise, of shares of Equity Interests of, or Indebtedness owed to any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary by, Unrestricted Subsidiaries (other than (x) Unrestricted Subsidiaries, the primary assets of which are Permitted Investments) received as Permitted Investments from Holdings or a Restricted Subsidiary and (y) distributions of Equity Interests of Unrestricted Subsidiaries to non-Loan Parties;

(xiv) so long as no Event of Default exists or would result therefrom, the declaration and payment of a Restricted Payment on Holdings' common stock (or the payment to the IPO Issuer or any Holdings Parent to fund a payment of dividends on such company's common stock), following consummation of an IPO, of up to 6.0% per annum of the net cash proceeds of such IPO received by or contributed to Holdings;

(xv) any distributions or payments of Securitization Fees, sales or contributions and other transfers of Securitization Assets and purchases of Securitization Assets, in each case in connection with a Qualified Securitization Facility;

(xvi) Restricted Payments in an amount not to exceed \$20,000,000 during the term of this Agreement so long as no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom;

(xvii) to the extent constituting Restricted Payments, Holdings, the Borrower and the Restricted Subsidiaries may consummate (1) transactions permitted pursuant to [Section 6.03](#) and (2) make Investments permitted under [Section 6.04](#) (other than [Section 6.04\(u\)](#));

(xviii) [reserved]; and

(xix) Restricted Payments so long as (i) no Event of Default shall have occurred and be continuing at the time of declaration of such Restricted Payment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time.

Notwithstanding anything else in this [Section 6.07\(a\)](#), Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, declare or make any Restricted Payment, in each case, pursuant to [Section 6.07\(a\)\(viii\)\(A\)](#), [\(xiv\)](#), or [\(xix\)](#) unless, on a Pro Forma Basis, the Senior Secured First Lien Net Leverage Ratio is less than 5.00 to 1.00 for the most recently ended Test Period as of such time.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Junior Financing constituting Material Indebtedness (other than to the extent of any Retained Declined Proceeds applied in compliance with [Section 2.11\(e\)](#)), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Junior Financing, except:

(i) to the extent such payments are not prohibited by the final proviso to [Section 6.01\(a\)](#), payment of regularly scheduled interest and principal payments, mandatory offers to repay, repurchase or redeem, mandatory prepayments of principal premium and interest, and payment of fees, expenses and indemnification obligations, with respect to such Junior Financing, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings, supplements, substitutions, extensions, restructurings, exchanges or renewals of ~~Indebtedness~~ Junior Financing with the proceeds of any other Junior Financing to the extent permitted by [Section 6.01](#) and fees and expenses in connection therewith;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any Holdings Parent, and any payment that is intended to prevent any Junior Financing from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code;

(iv) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity in an aggregate amount, not to exceed the sum of (A) an amount at the time of making any such prepayment, redemption, repurchase, defeasance or other payment and together with any other prepayments, redemptions, repurchases, defeasances and other payments made utilizing this subclause (A) not to exceed \$20,000,000, plus (B) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such ~~Investment~~prepayment, redemption, repurchase, defeasance or other payment plus (C) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such ~~Investment~~prepayment, redemption, repurchase, defeasance or other payment; provided that any amounts included in clause (b) of the definition of “Available Amount” may only be used for such prepayments, redemptions, repurchases, defeasances and other payments of Junior Financing so long as (i) no Default shall have occurred and be continuing at the time of making such prepayments, redemptions, repurchases, defeasances and other payments and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00;

(v) [reserved];

(vi) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity so long as (i) no Default shall have occurred and be continuing at the time of such prepayment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time;

(vii) prepayment of Second Lien Term Loans and Junior Financing owed to Holdings, the Borrower or any Restricted Subsidiary or the prepayment of Permitted Refinancing of such Indebtedness with the proceeds of any other Junior Financing permitted to be incurred hereunder; and

(viii) so long as no Specified Event of Default then exists or would result therefrom, prepayments of principal of and any required premium on loans under the Second Lien Credit Agreement in connection with the removal of a lender pursuant to Section 2.19(b), 2.21(b), 2.24(c) or 9.02(c) of the Second Lien Credit Agreement (or any comparable provision of a Permitted Refinancing thereof).

Notwithstanding anything else in this Section 6.07(b), Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or



interest on any Junior Financing constituting Material Indebtedness, in each case, pursuant to Section 6.07(b)(iv)(B) or (vi) unless, on a Pro Forma Basis, the Senior Secured First Lien Net Leverage Ratio is less than 5.00 to 1.00 for the most recently ended Test Period as of such time.

(c) Any basket available for Restricted Payments pursuant to Section 6.07(a) may instead be used to make a payment or other distribution of or in respect of principal of or interest on the Second Lien Term Loans or any Junior Financing, or any payment or other distribution on account of the purchase, redemption, retirement, acquisition, cancellation or termination of the Second Lien Term Loans or any Junior Financing, pursuant to Section 6.07(b), and such payment or other distribution shall not be prohibited by Section 6.07(b). For the avoidance of doubt, any such payment or other distribution shall reduce the amount available under such basket set forth in Section 6.07(a).

#### SECTION 6.08 Transactions with Affiliates.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) (A) transactions between or among Holdings, the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction and (B) transactions involving aggregate payment or consideration of less than \$7,500,000, (ii) on terms, taken as a whole, substantially as favorable to Holdings, the Borrower or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (iii) the Transactions and the payment of fees and expenses as part of or in connection with the Transactions, including without limitation the Transaction Costs and transactions constituting any Permitted Reorganization, (iv) the payment of (a) transaction fees and expenses and management fees to the extent otherwise permitted hereunder and (b) indemnities to the Investors (or management companies of the Investors) to the extent such indemnities relate to the ownership and operation of Holdings and its Restricted Subsidiaries, (v) issuances of Equity Interests of Holdings to the extent otherwise permitted by this Agreement, (vi) compensation (including bonuses and securities issuances or other payments, awards, grants in cash or otherwise) and employee benefit arrangements and severance arrangements between Holdings and its Restricted Subsidiaries and their respective officers, directors, managers, consultants and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Section 6.04) or any acquisition or other Investment permitted hereunder, (vii) payments by Holdings and its Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, to the extent such payments are permitted by Section 6.07, (viii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the Board of Directors, officers and employees of Holdings (or any Holdings Parent), the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, (ix) transactions pursuant to permitted agreements in existence or contemplated on the Effective Date and set forth on Schedule 6.08 or any amendment thereto to the extent such an

amendment is not adverse to the Lenders in any material respect, (x) Restricted Payments permitted under Section 6.07 and loans and advances in lieu thereof pursuant to Section 6.04(l), (xi) payments to or from, and transactions with, any joint venture in the ordinary course of business (including, without limitation, any cash management activities related thereto), (xii) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and which are fair to Holdings, the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (xiii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets or other customary transactions in connection with or any Qualified Securitization Facility, (xiv) customary payments by Holdings and its Restricted Subsidiaries to the Sponsor or Vista made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or financings), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (xv) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary, and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary and not in contemplation of such Unrestricted Subsidiary becoming redesignated as a Restricted Subsidiary, (xvi) Affiliate repurchases of the Loans Commitments and Second Lien Term Loans under the Second Lien Credit Agreement to the extent permitted hereunder and the holding of such Loans, Second Lien Term Loans or Commitments and the payments and other transactions contemplated herein and in the Second Lien Credit Agreement in respect thereof, and (xvii) any transaction between or among Holdings or any Restricted Subsidiary and any non-wholly owned Affiliate of Holdings or a joint venture or similar entity that is otherwise permitted hereunder to the extent such Affiliate, joint venture or similar entity is an Affiliate solely because Holdings or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, joint venture or similar entity.

#### SECTION 6.09 Restrictive Agreements.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; provided that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (1) Requirements of Law, (2) any Loan Document, (3) any documentation governing Incremental Equivalent Debt, (4) any documentation governing Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, (5) [reserved], (6) any documentation governing Indebtedness incurred pursuant to Section 6.01(a) (v) (but only to the

extent applicable to the assets financed by such Indebtedness (and replacements, additions, accessions and improvements to or proceeds of such assets and other assets financed by the same lender)), (vi), (viii), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xx), (xxv), (xxvi), (xxix), (xxx), or (xxxiv), and (7) any documentation governing any Permitted Refinancing incurred to refinance any such Indebtedness referenced in clauses (1) through (6) above;

(b) customary restrictions and conditions existing on the Effective Date and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses, sublicenses and other contracts (including licenses and sublicenses of Intellectual Property) restricting the assignment, license, sublicense, transfer or security interest thereof or assets subject thereto;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to Holdings, the Borrower or any Restricted Subsidiary (other than such Person that has become a Restricted Subsidiary);

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) restrictions set forth on Schedule 6.09 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(j) customary provisions in shareholders agreements, joint venture agreements, organization constitutive documents or similar binding agreements relating to any joint venture or non-wholly-owned Restricted Subsidiary and other similar agreements

applicable to joint ventures and non-wholly-owned Restricted Subsidiaries and applicable solely to such joint venture or non-wholly-owned Restricted Subsidiary and the Equity Interests issued thereby, in each case, permitted by [Section 6.04](#);

(k) customary restrictions contained in leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto;

(l) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Holdings, the Borrower or any Restricted Subsidiary;

(m) customary net worth provisions contained in real property leases or other contracts entered into by [Restricted](#) Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of Holdings, the Borrower and its [Restricted](#) Subsidiaries to meet their ongoing obligations;

(n) [reserved];

(o) restrictions on transfers of assets subject to Liens permitted by [Section 6.02](#) (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(p) restrictions created in connection with any Qualified Securitization Facility;

(q) any restrictions regarding licensing or sublicensing by Holdings and its Restricted Subsidiaries of Intellectual Property in the ordinary course of business that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole;

(r) any restrictions that arise in connection with cash or other deposits permitted under [Section 6.02](#) and [Section 6.04](#);

(s) the Second Lien Loan Documents; and

(t) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Effective Date and permitted under Section 6.01 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrances or restriction applies only during the continuance of a default relating to such agreement or instrument.

SECTION 6.10 Amendment of Junior Financing; Modifications of Organizational Documents.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, amend or modify the documentation governing any Junior Financing if such amendment is not expressly permitted by any applicable Intercreditor Agreement or subordination agreement if the effect of such amendment or modification is materially adverse to the Lenders, Swing Line Lender or the Issuing Banks; provided that such modification will not be deemed to be materially adverse if such Junior Financing could be otherwise incurred or refinanced under this Agreement (including as Indebtedness that does not constitute a Junior Financing) with such terms as so modified at the time of such modification.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, terminate, amend or modify any of its Organizational Documents (including, but not limited to, changing jurisdiction of organization) in a manner that is materially adverse to the interests of the Lenders.

SECTION 6.11 Financial Performance Covenant.

As of the end of each fiscal quarter of Holdings (commencing with the first full fiscal quarter ending after the Effective Date) and so long as the aggregate amount of Revolving Exposure outstanding as of the end of such fiscal quarter (excluding (a) all cash collateralized Letters of Credit, and additional undrawn Letters of Credit in an aggregate amount not to exceed \$5,000,000, and (b) [reserved]) exceeds 35.0% of the aggregate amount of all Revolving Commitments in effect as of such date, Holdings and the Borrower shall not permit the Senior Secured First Lien Net Leverage Ratio as of the end of any fiscal quarter ending on any date set forth in the table below, to exceed the applicable ratio set forth in the table below opposite such date, unless the Required Revolving Lenders otherwise consent:

<u>Test Period</u>	<u>Ratio</u>
September 30, 2017	7.70 to 1.00
December 31, 2017	7.70 to 1.00
March 31, 2018	7.70 to 1.00
June 30, 2018	7.70 to 1.00
September 30, 2018	7.70 to 1.00
December 31, 2018	7.70 to 1.00
March 31, 2019	7.70 to 1.00
June 30, 2019	7.70 to 1.00
September 30, 2019 and each Test Period ending thereafter	7.20 to 1.00

EVENTS OF DEFAULTSECTION 7.01 Events of Default.

If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay (i) any interest or premium on any Loan when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days, or (ii) any fee or any other amount (other than an amount referred to in paragraph (a) or (b)(i) of this Section 7.01) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten (10) days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, the Borrower or any of its Restricted Subsidiaries in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) (i) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a) or 5.04 (with respect to the existence of Holdings or the Borrower only) or in Article VI (other than the Financial Performance Covenant); provided that any Event of Default under Section 5.02(a) shall be deemed cured upon Borrower providing the applicable written notice; or

(ii) Holdings or any of the Restricted Subsidiaries shall fail to observe or perform the Financial Performance Covenant (a “Financial Performance Covenant Event of Default”); provided, that any Financial Performance Covenant Event of Default shall not constitute an Event of Default with respect to the Initial Term Loans, any Incremental Term Loan or any Credit Agreement Refinancing Indebtedness (unless consisting of Other Revolving Loans) unless and until the Required Revolving Lenders shall have terminated the Revolving Commitments and declared all amounts outstanding thereunder to be due and payable and such declaration has not been rescinded; provided, further, that any Financial Performance Covenant Event of Default is subject to cure as provided in Section 7.02 and such Financial Performance Covenant Event of Default shall not occur until the expiration of the fifteenth (15th) Business Day subsequent to the date on which the financial statements with respect to the applicable fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable;

(e) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrower;

(f) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period and all required notices have been given); provided that this paragraph (f) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of such non-payment is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares; provided that this paragraph (f) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired and all required notices have been given) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this paragraph (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement), (ii) termination events or similar events occurring under any Swap Agreement that constitutes Material Indebtedness (it being understood that paragraph (f) of this Section 7.01 will apply to any failure to make any payment required as a result of any such termination or similar event) or (iii) any Indebtedness if the sole remedy of the holder thereof following such event or condition is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares, provided that this paragraph (g) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01.

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, court protection, examination, reorganization or other relief in respect of Holdings, the Borrower or any Material Subsidiary or its debts, or of a material part of its assets, under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, examiner, sequestrator, conservator, interim receiver, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets, and, in any such case, such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings, the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, court protection, examinership, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect (but excluding any such proceeding or petition (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator, interim receiver, interim examiner, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets (but excluding any such application or consent (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors;

(j) one or more enforceable judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (to the extent not covered by insurance or another creditworthy (as reasonably determined by the Administrative Agent) indemnitor, and as to which such insurer or indemnitor has not denied coverage) shall be rendered against Holdings, the Borrower, any Material Subsidiary or any combination thereof and the same shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) consecutive days;

(k) an ERISA Event occurs that has resulted or would reasonably be expected, individually or together with any other ERISA Event(s) in the aggregate to result in a Material Adverse Effect;

(l) there shall cease to be, or shall be asserted by any Loan Party not to be (other than in an informational notice), a valid and perfected (if and to the extent required to be perfected under the Loan Documents) Lien on any material portion of the Collateral, with the priority required by the applicable Security Documents, except (i) as a result of the release of a Loan Party (including as a result of the designation of a Restricted Subsidiary as an Unrestricted Subsidiary) or the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) as a result of the Collateral Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security Documents or (B) file Uniform Commercial Code amendment or continuation financing statements or (iii) 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 (iv) as a result of acts or omissions of the Collateral Agent, the Administrative Agent or any Lender;



(m) any material provision of any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any material portion of the Guarantees of the Loan Document Obligations pursuant to the Guarantee Agreement, taken as a whole, shall cease to be in full force and effect (in each case, other than the occurrence of the Termination Date or otherwise in accordance with the terms of the Loan Documents including as a result of transactions permitted hereunder); or

(o) a Change in Control shall occur;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent at the request of the Required Lenders (provided that the following actions may not be taken (A) in the case of an Event of Default under Section 7.01(d)(ii), until the ability to exercise the Cure Right under Section 7.02 has expired (but may be taken as soon as the ability to exercise the Cure Right has expired and it has not been so exercised or to the extent that Holdings has confirmed in writing that it does not intend to provide the Cure Amount) and (B) in the case of an Event of Default under Section 7.01(d)(i), if the express conditions in the last proviso contained in Section 7.01(d)(i) have been satisfied) shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and (iii) demand the Borrower deposit cash collateral with the Administrative Agent as contemplated by Section 2.05(j) in the aggregate LC Exposure of all outstanding Letters of Credit and thereupon the principal of the Loans and the LC Exposure of all Letters of Credit so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

#### SECTION 7.02 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.01, in the event that Holdings and its Restricted Subsidiaries fail to comply with the requirements of the Financial Performance Covenant as of the last day of any applicable fiscal quarter of Holdings, at any time after the beginning of such fiscal quarter until the expiration of the fifteenth (15th) Business Day subsequent to the date on which the financial statements with respect to such fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be

delivered pursuant to Section 5.01(a) or (b), as applicable (the “Cure Termination Date”), Holdings shall have the right to issue Qualified Equity Interests for cash or otherwise receive cash contributions to the capital of Holdings as cash common equity or other Qualified Equity Interests (collectively, the “Cure Right”), and upon the receipt by Holdings of the Net Proceeds of such issuance (the “Cure Amount”) pursuant to the exercise by Holdings of such Cure Right the Financial Performance Covenant shall be recalculated giving effect to the following pro forma adjustment:

(i) Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four fiscal quarter period that contains such fiscal quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(ii) if, after giving effect to the foregoing pro forma adjustment (without giving effect to (x) any repayment of any Indebtedness with any portion of the Cure Amount or (y) any portion of the Cure Amount on the balance sheet of Holdings and its Restricted Subsidiaries, in each case, with respect to such fiscal quarter only), Holdings and its Restricted Subsidiaries shall then be in compliance with the requirements of the Financial Performance Covenant, Holdings and its Restricted Subsidiaries shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default or event of default of the Financial Performance Covenant that had occurred shall be deemed cured for the purposes of this Agreement and the other Loan Documents;

provided that the Borrower shall have notified the Administrative Agent of the exercise of such Cure Right within five (5) Business Days of the issuance of the relevant Qualified Equity Interests for cash or the receipt of the cash contributions by Holdings.

(b) Notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period of the Borrower there shall be at least two (2) fiscal quarters in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five (5) times, (iii) for purposes of this Section 7.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant and any amounts in excess thereof shall not be deemed to be a Cure Amount and (iv) neither the Administrative Agent nor any Lender or Secured Party shall exercise any remedy (including acceleration) under the Loan Documents or applicable law on the basis of an Event of Default caused by the failure to comply with Section 6.11 until either (x) after Holding’s ability to cure has lapsed and Holdings has not exercised the Cure Right or (y) Holdings has confirmed in writing that it does not intend to provide the Cure Amount, and, if the Borrower shall have delivered to the Administrative Agent a notice of its intent to cure a breach or default under Section 7.01(d)(ii) prior to the Cure Termination Date, no Event of Default under Section 7.01(d)(ii) shall then be deemed to be in existence, provided, however, that if the Cure Amount is not received by Holdings on or prior to the Cure Termination Date, such Event

of Default shall be deemed to arise). Notwithstanding any other provision in this Agreement to the contrary, the Cure Amount received pursuant to any exercise of the Cure Right shall not be included in the calculation of Consolidated EBITDA or any incurrence ratio test for purposes of determining any available basket under Article VI of this Agreement or for any other purpose under this Agreement. For the avoidance of doubt, no Cure Amounts shall be applied to reduce the Indebtedness of Holdings and its Restricted Subsidiaries on a Pro Forma Basis for purposes of determining compliance with the Financial Performance Covenant for the fiscal quarter in which such Cure Right was made and there shall not have been a breach of any covenant under Article VI of this Agreement by reason of having no longer included such Cure Amount in any basket during the relevant period.

(c) Notwithstanding the foregoing, if an Event of Default would have occurred and be continuing had Holdings not had the option to exercise the Cure Right and not exercised such Cure Right pursuant to the foregoing provisions, the Borrower shall not be permitted, until such Event of Default is cured in accordance with the terms of Section 7.02(a) or waived in accordance with Section 9.02, to make any Borrowings or request any other extensions of credit under the Revolving Commitments (including any issuance of any Letter of Credit but excluding the continuation of any outstanding Revolving Loans and amendments of any outstanding Letters of Credit (not constituting an increase or extension)).

SECTION 7.03 Application of Proceeds. Subject to the terms of the Closing Date Intercreditor Agreement and any other applicable Intercreditor Agreement, the Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Collateral Agent in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all fees, indemnities and other amounts payable to the Collateral Agent in connection with the Loan Documents or any of the Secured Obligations and all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Secured Obligations that constitute Senior Secured First Lien Indebtedness (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of such Secured Obligations owed to them on the date of any such distribution); provided that such payment shall be applied (w) first, to the portion of such Secured Obligations constituting accrued and unpaid fees, indemnities and other amounts (other than principal and interest) payable to the Lenders in respect of the Loans, (x) second, to the portion of such Secured Obligations constituting such accrued and unpaid interest in respect of the Loans, (y) third, to all other Secured Obligations;

THIRD, to any agent of any other junior secured debt, in accordance with the Closing Date Intercreditor Agreement and any other any applicable Intercreditor Agreement; and

FOURTH, to the Loan Parties, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. The Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations. Notwithstanding the foregoing, Excluded Swap Obligations with respect to any Subsidiary Loan Party shall not be paid with amounts received from such Subsidiary Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above.

## ARTICLE VIII

### ADMINISTRATIVE AGENT

#### SECTION 8.01 Appointment and Authority.

(a) Each of the Lenders, the Swing Line Lender and each of the Issuing Banks hereby irrevocably appoints Barclays Bank PLC to act on its behalf as the Administrative Agent and Collateral 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 and Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 8.06) are solely for the benefit of the Administrative Agent and the Collateral Agent, the Lenders, the Swing Line Lender and the Issuing Banks, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. The Administrative Agent may perform any of its respective duties hereunder by or through its officers, directors, agents, employees or affiliates.

(b) The Administrative Agent shall also act as the “Collateral Agent” or, as the case may be, “Security Trustee” under the Loan Documents, and each of the Lenders and each of the Issuing Banks hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent or, as the case may be, the security trustee, of such Lender and such Issuing Bank, and acknowledges that, to the extent required in any relevant jurisdiction, the Administrative Agent may enter into such security trust or equivalent deeds as the Administrative Agent may consider necessary, in each case 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 Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent and Collateral Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security 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 VIII and Article IX (including Section 9.03 as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” or the “security agent” or the “security trustee” under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, 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 of the Borrower as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law;

(c) 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 their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not 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 Section 9.02 and in the last paragraph of Section 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment; provided that the Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or any Issuing Bank;

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security 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; and

(f) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the Disqualified Lenders List or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Lenders. 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 Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to any anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Loan Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under any anti-terrorism law.

#### SECTION 8.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise

authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance 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. The Administrative Agent may rely on the Register and deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent.

#### SECTION 8.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents (which may include such of the Administrative Agent's affiliates or branches as it deems appropriate) appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub agents, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub agents.

#### SECTION 8.06 Resignation of Administrative Agent.

The Administrative Agent may resign upon fifteen (15) Business Days' notice to the Lenders (unless such notice is waived by the Required Lenders), the Issuing Banks (unless such notice is waived by the Issuing Banks) and the Borrower (unless an Event of Default exists under 7.01(h) or 7.01(i) or unless such notice is waived by the Borrower). Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (such consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank or trust company with an office in the United States, or an Affiliate of any such bank or trust company with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within fifteen (15) Business Days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to), with the Borrower's consent (such

consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing), on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank (the date upon which the retiring Administrative Agent is replaced, the “Resignation Effective Date”); provided that if the Administrative Agent shall notify the Borrower and the Lenders that it does not intend to appoint a successor or that no qualifying Person accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section.

If the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders and Holdings may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within fifteen (15) Business Days (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) 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 or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. 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 or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.



Any resignation by Barclays Bank PLC as Administrative Agent pursuant to this Section 8.06 shall also constitute its resignation as an Issuing Bank and the Swing Line Lender, in which case such resigning Issuing Bank and Swing Line Lender (x) shall not be required to issue any further Letters of Credit or extend any further Swing Line Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swing Line Lender with respect to any Letters of Credit issued by it or Swing Line Loans extended by it, as applicable, prior to the date of such resignation so long as such Letters of Credit, LC Exposure or Swing Line Loans remain outstanding and not otherwise cash collateralized in accordance with the terms herein. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swing Line Lender, (ii) the retiring Issuing Bank and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

**SECTION 8.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption, Incremental Facility Amendment or Refinancing Amendment pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent and Collateral Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent or Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent or Collateral Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing)

shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent or Collateral Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

SECTION 8.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, neither any Joint Lead Arrangers, any Amendment No. 1 Arranger, any Amendment No. 2 Arranger nor any person named on the cover page hereof as a Joint Lead Arranger shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or outstanding Letter of Credit 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, Letter of Credit outstandings and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks, the Swing Line Lender and the Administrative Agent under Sections 2.12 and 9.03) 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 each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or any Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank or in any such proceeding.

**SECTION 8.10 No Waiver; Cumulative Remedies; Enforcement.**

No failure by any Lender, any Issuing Bank 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 Article VII for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Banks or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank or the Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.08 (subject to the terms of Section 2.18), 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 Article VII and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.18, 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 8.11 Status of Administrative Agent.**

On or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement, the Administrative Agent shall deliver to the Borrower (i) if the Administrative Agent is a United States person (as defined in Section 7701(a)(30) of the Code), an executed copy of Internal Revenue Service Form W-9, or (ii) if the Administrative Agent is not a United States person (as defined in Section 7701(a)(30) of the

Code), (A) an executed applicable Internal Revenue Service Form W-8ECI with respect to amounts received on its own account and (B) an executed Internal Revenue Service Form W-8IMY evidencing its agreement with the Borrower to be treated as a United States person (as defined in Section 7701(a)(30) of the Code) as set forth in U.S. Treasury Regulation Section 1.1441-1T(b)(2)(iv), for the purpose of permitting the Borrower to make payments to such Administrative Agent without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent shall deliver such documentation on or before any date on which such documentation expires or becomes obsolete or invalid, after the occurrence of any change in the Administrative Agent's circumstances requiring a change in the most recent documentation previously delivered by it to the Borrower, and from time to time thereafter if reasonably requested by the Borrower, and shall promptly notify the Borrower in writing if it is no longer legally eligible to provide any documentation previously provided.

## ARTICLE IX

### MISCELLANEOUS

#### SECTION 9.01 Notices.

(a) All notices and other communications provided for herein shall be in writing and shall be delivered by overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission (including e-mail), as follows:

(i) if to Holdings, the Borrower, the Administrative Agent, the Swing Line Lender or Barclays Bank PLC as an Issuing Bank, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 9.01; and

(ii) if to any other Lender or Issuing Bank, to it at its address (or fax number, telephone number or e-mail address) set forth in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain Material Non-Public Information relating to the Borrower).

Notices and other communications sent by 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 fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures reasonably approved by the Administrative Agent, provided that the foregoing shall not apply to

notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received when sent to the proper e-mail address as specified on Schedule 9.01 (as updated from time to time in accordance with Section 9.01(d)), 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 Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received when an e-mail is sent to 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.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to Holdings, the Borrower, any Lender, any Issuing Bank 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 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, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Holdings, the Borrower, the Administrative Agent, the Swing Line Lender and any Issuing Bank may change its address, electronic mail address, fax or telephone number for notices and other communications or website hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the Swing Line Lender and the Issuing Banks. 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, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, Issuing Bank and Lenders. The Administrative Agent, the Swing Line Lender, the Issuing Banks and the Lenders shall be entitled to rely and act upon any 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. 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 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power under this Agreement or any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks, the Swing Line Lender and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance, amendment, renewal or extension of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.20 with respect to any Incremental Facility Amendment, Section 2.21 with respect to any Refinancing Amendment or Section 2.24 with respect to any Permitted Amendment, neither this Agreement, any Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent and the Required Lenders (provided, that if such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall only be required to acknowledge such waiver, amendment or modification) or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that, to the extent not otherwise specified, the consent of the Required Lenders shall not be required with respect to the amendments set forth below; provided, further, that no such agreement shall (i) increase the Commitment of any Lender without the written consent of (x) the Required Lenders and (y) such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an

extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the reimbursement obligations of the Borrower for the LC Exposure at such time (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness of principal) or reduce the rate of interest thereon, or reduce any fees or premiums payable hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that any change to the definition of Total Net Leverage Ratio, Senior Secured Net Leverage Ratio or Senior Secured First Lien Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction of interest or fees), provided that only the consent of the Required Lenders shall be necessary to waive or otherwise modify any obligation of the Borrower to pay default interest pursuant to Section 2.13(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or the date of any scheduled amortization payment of the principal amount of any Term Loan under Section 2.10 or the applicable Refinancing Amendment, or the reimbursement date with respect to any LC Disbursement, or any date for the payment of any interest, premium or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby, (iv) change Section 2.18(b), Section 2.18(c) or Section 7.03 in a manner that would alter the pro rata sharing of payments or other amounts required thereby without the consent of each Lender directly and adversely affected thereby (provided, that any such changes required in connection with any Refinancing Amendment, Incremental Facility Amendment or other transaction expressly permitted hereunder shall only require the approval (to the extent any approval is required) of the Required Lenders so long as the Administrative Agent is notified of such amendment), (v) change any of the provisions of this Section 9.02(b) without the written consent of each Lender, (vi) change the definition of “Required Lenders”, “Required Revolving Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vii) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender) or (viii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender (other than a Defaulting Lender), except as expressly provided in the Loan Documents; provided, further, that in connection with an amendment that addresses solely a repricing transaction in which any Class of Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) is refinanced with a replacement Class of term loans or revolving commitments (and the revolving loans in respect hereof) bearing (or is modified in such a manner such that the resulting term loans or revolving commitments (and the revolving loans in respect hereof) bear a lower yield, only the consent of the Lenders holding Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) subject to such permitted repricing transaction that will continue as a Lender in respect of the repriced tranche of Term Loans or Revolving Commitments (and the Revolving Loans in respect hereof) or modified Term Loans or Revolving Commitments and the Revolving Loans in respect hereof shall be required); provided, further, that (A) no such agreement shall amend, modify or

otherwise affect the rights or duties of the Administrative Agent, the Swing Line Lender or any Issuing Bank without the prior written consent of the Administrative Agent, the Swing Line Lender or such Issuing Bank, as the case may be; provided, however, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the Swing Line Lender and the Borrower so long as the obligations of the Revolving Lenders are not affected thereby, (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any mistake, ambiguity, omission, defect, obvious error or incorrect cross-reference, or to effect administrative changes of a technical or immaterial nature or to correct any inconsistency and (C) 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 Holdings, the Borrower and the requisite percentage in interest of the affected Class of Lenders stating that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings 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 and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion and (b) guarantees, Security Documents and related documents in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement and the other Loan Documents, 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, (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents or (iv) to integrate any Incremental Facility or Credit Agreement Refinancing Indebtedness in a manner consistent with this Agreement and the other Loan Documents. Notwithstanding the foregoing, (A) no Lender or Issuing Bank consent is required to effect any amendment, modification or supplement to any Intercreditor Agreement or subordination agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral, including any Incremental Term Loan or Revolving Loan under any Incremental Revolving Commitment Increase, any Other Term Loan, Other Revolving Loan or Other Revolving Commitments, for the purpose of adding the holders of such Indebtedness (or their Senior Representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto, to give effect hereto or otherwise carry out the purposes thereof, in each case as contemplated by the terms of such Intercreditor Agreement permitted under this Agreement (including any changes thereto as contemplated by Section 9.14(b)) or subordination agreement or arrangement permitted under this Agreement, as applicable and (B) no agreement shall (x) amend, waive or otherwise modify Section 6.11 hereof or the defined terms used for Section 6.11, (y) waive any Financial Performance Covenant Event of Default without the written consent of the Required



Revolving Lenders or (z) amend, waive or otherwise modify any of the conditions set forth in Section 4.02 with respect to the making of any Revolving Loan or issuance of any Letters of Credit without the written consent of the Required Revolving Lenders; provided, however, that any amendments, modifications, waivers and consents described in this clause (B) shall not require the consent of any Lenders other than the Required Revolving Lenders.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a “Non-Consenting Lender”), then the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, (i) require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) or (ii) prepay the Loans and, if applicable, terminate the Revolving Commitments of such Non-Consenting Lenders; provided that (a) in the case of the preceding clause (i), the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable (and, if a Revolving Commitment is being assigned and each Issuing Bank), which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding par principal amount of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (including pursuant to Section 2.11(a)(i)) from (x) in the case of preceding clause (i), the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (y) in the case of preceding clause (ii), from the Borrower, and (c) in the case of preceding clause (i), unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b). If any applicable Lender shall be deemed a Non-Consenting Lender and is required to assign all or any portion of its Initial Term Loans or its Initial Term Loans are prepaid by the Borrower pursuant to this Section 9.02(c) on or prior to the six-month anniversary of the Effective Date as a result of a Repricing Transaction, the Borrower shall pay such Non-Consenting Lender a fee equal to 1.00% of the principal amount of the Initial Term Loans so assigned or prepaid.

(d) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Revolving Commitments, Term Loans and Revolving Exposure of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); provided that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender (other than an Affiliated Debt Fund) hereby agrees that, for purposes of any plan of reorganization, such Affiliated Lender will be deemed to have voted in the same proportion as non-Affiliated Lenders voting on such matter; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion in connection with any plan of reorganization to the extent (a) any such plan of reorganization proposes to treat any Secured Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Secured Obligations held by Lenders that are not Affiliates of the Borrower, (b) that would deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled or (c) if such plan of reorganization does not require the consent of each Lender or each affected Lender.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay, if the Effective Date occurs and the Transactions have been consummated, (i) all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent, the Joint Lead Arrangers, each Issuing Bank and their respective Affiliates (without duplication), (but limited, (A) in the case of legal fees and expenses, to the reasonable, documented, out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, the Issuing Banks and the Joint Lead Arrangers, taken as a whole, plus, if reasonably necessary, one regulatory counsel and one local counsel to the Administrative Agent, the Issuing Banks and the Joint Lead Arrangers, taken as a whole, in any relevant material jurisdiction, in each case excluding allocated costs of in-house counsel (and in the case of an actual or potential conflict of interest, one additional counsel and local counsel to the affected Lenders, taken as a whole) and (B) in the case of other consultants and advisors, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed), in each case for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, and the preparation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof), (ii) all reasonable and documented and invoiced out-of-pocket costs and expenses incurred by each Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented and invoiced out-of-pocket expenses (but not third party costs or expenses such as legal fees or the fees of other advisors) incurred by the Administrative Agent, each Issuing Bank or any Lender and the fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, in any relevant material jurisdiction (and in the case of an actual or potential conflict of interest, one additional counsel to the affected Lenders, taken as a whole) (but limited, (A) in the case of legal fees and expenses, to the fees, disbursements and other charges of one counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, and, if reasonably necessary, one local counsel and one regulatory counsel to the Administrative Agent, the Issuing Banks and the Lenders, taken as a whole, in each relevant material jurisdiction (and in the case of an actual or potential conflict of interest, one additional counsel to the affected Lenders, taken as a whole)

and (B) in the case of other consultants and advisers, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed) in connection with the enforcement or protection of any rights or remedies in connection with the Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Laws or during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit).

(b) Without duplication of the expense reimbursement obligations pursuant to clause (a) above, the Borrower shall indemnify the Administrative Agent, each Issuing Bank, each Lender, the Joint Lead Arrangers and each Related Party (other than Excluded Affiliates) of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and expenses (but limited, in the case of legal expenses, to the reasonable and documented and invoiced out-of-pocket fees and expenses of one counsel for all Indemnitees and to the extent reasonably determined by the Administrative Agent to be necessary, one regulatory counsel and one local counsel in each relevant jurisdiction (and, in the case of an actual or potential conflict of interest, one additional counsel) for all Indemnitees (which may include a single special counsel acting in multiple jurisdictions but excluding allocated costs of in-house counsel)), incurred by or asserted against any Indemnatee by any third party or by the Borrower, Holdings or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any Loan Document or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, the syndication of the credit facilities provided for herein, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other real property currently owned or operated by Holdings, the Borrower or any Subsidiary, or any other Environmental Liability related in any way to Holdings, the Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, Holdings or any Subsidiary or their Affiliates and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, costs or related expenses (w) resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee or its controlled Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (x) resulted from a material breach of the Loan Documents by such Indemnatee or its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) arise from disputes between or among Indemnitees (other than disputes involving claims against the Administrative Agent, the Collateral Agent or the Joint Lead Arrangers or any Issuing Bank, in each case, in their respective capacities) that do not involve an act or omission by the Sponsor, Holdings, the Borrower or any Restricted Subsidiary or (z) resulted from any settlement effected without the Borrower’s prior written consent (which consent shall not be unreasonably withheld or delayed); provided that, to the extent any amounts paid to an Indemnatee in respect of this

Section 9.03, such Indemnitee, by its acceptance of the benefits hereof, agrees to refund and return any and all amounts paid by the Borrower to it if, pursuant to the operation of the foregoing clauses (w) through (z), such Indemnitee was not entitled to receipt of such amount. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, any Lender or any Issuing Bank under paragraph (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Administrative Agent, such Lender or such Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Lender or such Issuing Bank in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at such time. The obligations of the Lenders under this paragraph (c) are subject to the last sentence of Section 2.02(a) (which shall apply *mutatis mutandis* to the Lenders' obligations under this paragraph (c)).

(d) To the extent permitted by applicable law, none of Holdings, the Borrower, any Agent, any Lender, any other party hereto or any Indemnitee shall assert, and each hereby waives, any claim against any other such Person on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby or thereby, or any act or omission or event occurring in connection therewith and each such Person further agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

(e) In case any proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Borrower of the commencement of any proceeding; provided, however, that the failure to do so will not relieve the Borrower from any liability that it may have to such Indemnitee hereunder, except to the extent that the Borrower is materially prejudiced by such failure. Notwithstanding the above, following such notification, the Borrower may elect in writing to assume the defense of such proceeding, and, upon such election, the Borrower will not be liable for any legal costs subsequently incurred by such Indemnitee (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) the Borrower has failed to provide counsel reasonably satisfactory to such Indemnitee in a timely manner, (ii) counsel provided by the Borrower reasonably determines its representation of such Indemnitee would present it with a conflict of interest or (iii) the Indemnitee reasonably determines that there are actual conflicts of interest between the Borrower and the Indemnitee, including situations in which there may be legal defenses available to the Indemnitee which are different from or in addition to those available to the Borrower.

(f) Notwithstanding anything to the contrary in this Agreement, the extent permitted by applicable law, neither Holdings nor the Borrower shall assert, and each hereby waives, any claim against any Indemnatee for any direct or actual damages arising from the use by unintended recipients of information or other materials distributed to such unintended recipients by such Indemnatee through telecommunications, electronic or other information transmission systems (including the Internet) in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; except to the extent that such direct or actual damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or a material breach of the Loan Documents by, such Indemnatee or its Related Parties.

(g) All amounts due under this Section 9.03 shall be payable not later than twenty (20) Business Days after written demand therefor; provided, however, that any Indemnatee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnatee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (other than to a Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) without the prior written consent of each Lender, each Issuing Bank and the acknowledgement of the Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent (other than to a Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) shall be null and void), (ii) no assignment shall be made to any Defaulting Lender or any of its Affiliates, or any Persons who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (ii) and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04), the Indemnitees and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraphs (b)(ii) and (f) below, any Lender may assign to one or more Eligible 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) with the prior written consent (such consent not to be unreasonably withheld or delayed) of (A) the Borrower; provided that no consent of the Borrower shall be required for an assignment (x) by a Term Lender to any Lender, an Affiliate of any Lender or an Approved Fund, (y) if a Specified Event of Default has occurred and is continuing or (z) by a Revolving Lender to any Lender, an Affiliate of any Lender or an Approved Fund; provided, further, that no assignee contemplated by the immediately preceding proviso shall be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable assignor would have been entitled to receive with respect to the assignment made to such assignee, unless the assignment to such assignee is made with the Borrower's prior written consent; provided, further, that the Borrower shall have the right to withhold its consent to any assignment if in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority, (B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of a Term Loan subject to Section 9.04(f) and (g), an Affiliated Lender, Holdings, the Borrower or any of its Subsidiaries; provided, further, that no consent of the Administrative Agent shall be required for an assignment of Term Loans to a Lender or by a Lender to one of its controlled Affiliates or an Affiliate under common control with such Lender and (C) solely in the case of Revolving Loans and Revolving Commitments, each Issuing Bank and the Swing Line Lender (not to be unreasonably withheld or delayed); provided that, for the avoidance of doubt, no consent of any Issuing Bank shall be required for an assignment of all or any portion of a Term Loan or Term Commitment. Notwithstanding anything in this Section 9.04 to the contrary, if the Borrower has not given the Administrative Agent written notice of its objection to an assignment of Term Loans within ten (10) Business Days after written notice of such assignment, the Borrower shall be deemed to have consented to such assignment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall, in the case of Revolving Loans, not be less than \$5,000,000 (and integral multiples thereof) or, in the case of a Term Loan, \$1,000,000 (and integral multiples thereof), unless the Borrower and the Administrative Agent otherwise consent (in each case, such consent not to be unreasonably withheld or delayed); provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) 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 execute and deliver to the Administrative Agent an Assignment and

Assumption, and, in each case, together with a processing and recordation fee of \$3,500 payable by the assignee; provided that such processing and recordation fee shall not be payable in connection with an assignment by a Lender to one of its controlled Affiliates or an Affiliate under common control with such Lenders; provided, further, that the Administrative Agent, in its sole discretion, may elect to waive or reduce such processing and recordation fee; provided, further, that any such Assignment and Assumption shall include a representation by the assignee that the assignee is not a Disqualified Lender (but only if the Disqualified Lenders List is available to such assignee and Lenders upon request); provided, further, that assignments made pursuant to Section 2.19(b), 2.21(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective, (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent any tax forms required by Section 2.17(f) and an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain Material Non-Public Information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws and (E) unless the Borrower otherwise consents, no assignment of all or any portion of the Revolving Commitment of a Lender that is also an Issuing Bank may be made unless (1) the assignee shall be or become an Issuing Bank, as applicable, and assume a ratable portion of the rights and obligations of such assignor in its capacity as Issuing Bank, or (2) the assignor agrees, in its discretion, to retain all of its rights with respect to and obligations to make or issue Letters of Credit hereunder in which case the Applicable Fronting Exposure of such assignor may exceed such assignor's Fronting Exposure Cap for purposes of Section 2.05(b) by an amount not to exceed the difference between the assignor's Fronting Exposure Cap prior to such assignment and the assignor's Fronting Exposure Cap following such assignment; provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 paragraph (c)(i) of this Section 9.04 to the extent otherwise permitted thereby or otherwise shall be void.

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and interest amounts of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). 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. The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent, the Issuing Banks 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Register is intended to cause each Loan to be in registered form for U.S. federal income tax purposes under Section 5f.103-1(c) of the U.S. Treasury Regulations and Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire and any tax forms required by Section 2.17(f) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words “execution”, “signed”, “signature” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as an original executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more banks or other Persons (other than to a Disqualified Lender (but only if the Disqualified Lenders List is available to Lenders upon request) or other Person that is not an Eligible Assignee) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such



Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent, the Issuing Banks 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 any other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(iii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the obligations and limitations thereof and Section 2.19, it being understood that any tax forms required by Section 2.17(f) shall be provided to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04 provided that such Participant agrees to be subject to the provisions of Sections 2.19 as if it were an assignee under paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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 the parties hereto shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of its Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or other obligations under the Loan Documents) except to the extent to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(iii) A Participant (other than a Revolving Lender pursuant to Section 2.05(e)) shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 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.

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other "central" bank, and this

Section 9.04 shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans and participations in Letters of Credit and Swing Line Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(f) Notwithstanding anything to the contrary herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement to an Affiliated Lender subject to the following limitations:

(i) Affiliated Lenders (other than Affiliated Debt Funds) will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of Borrowings, notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(ii) for purposes of any amendment, waiver or modification of any Loan Document (including such modifications pursuant to Section 9.02), or, subject to Section 9.02(e), in any plan of reorganization pursuant to the U.S. Bankruptcy Code, that in either case does not require the consent of each Lender, or that would not deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled, Affiliated Lenders will be deemed to have voted in the same proportion as the Lenders that are not Affiliated Lenders voting on such matter; and each Affiliated Lender hereby acknowledges, agrees and consents that if, for any reason, its vote to accept or reject any plan pursuant to the U.S. Bankruptcy Code is not deemed to have been so voted, then such vote will be (x) deemed not to be in good faith and (y) "designated" pursuant to Section 1126(e) of the U.S. Bankruptcy Code such that the vote is not counted in

determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the U.S. Bankruptcy Code; provided that Affiliated Debt Funds will not be subject to such voting limitations and will be entitled to vote as any other Lender; provided that Affiliated Debt Funds may not account for more than 49.9% of the “Required Lenders” in any Required Lender vote;

(iii) Affiliated Lenders may not purchase Revolving Loans, Other Revolving Loans or Swing Line Loans, including pursuant to this Section 9.04;

(iv) the aggregate principal amount of Term Loans purchased by assignment pursuant to this Section 9.04 and held at any one time by Affiliated Lenders (other than Affiliated Debt Funds) may not exceed 25.0% of the aggregate principal amount of all Term Loans outstanding at the time of such purchase, after giving effect to any substantially simultaneous cancellations thereof;

(v) Affiliated Lenders shall clearly identify themselves as an Affiliated Lender in the loan assignment documentation. In no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any lender is an Affiliated Lender or Affiliated Debt Fund nor shall the Administrative Agent be obligated to monitor the number of Affiliated Lenders or Affiliated Debt Funds or the aggregate amount of Term Loans or Incremental Term Loans held by Affiliated Lenders or Affiliated Debt Funds;

(vi) Affiliated Lenders (other than Affiliated Debt Funds) will not be permitted to vote on matters requiring a Required Lender vote, and the Term Loans held by Affiliated Lenders (other than Affiliated Debt Funds) shall be disregarded in determining (x) other Lenders’ commitment percentages or (y) matters submitted to Lenders for consideration that do not require the consent of each Lender or each affected Lender; provided that the commitments of any Affiliated Lender shall not be increased, the Interest Payment Dates and the dates of any scheduled amortization payments (including at maturity) owed to any Affiliated Lender hereunder will not be extended and the amounts owing to any Affiliated Lender hereunder will not be reduced without the consent of such Affiliated Lender;

(vii) each Lender making such assignment to such Affiliated Lender acknowledges and agrees that in connection with such assignment, (1) such Affiliated Lender then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on such Affiliated Lender, Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender’s lack of knowledge of the Material Non-Public Information and (3) none of Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, any Affiliated Lender or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, such Affiliated Lender and their respective

Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders; and

(viii) proceeds of Revolving Loans may not be used to effect Term Loans purchased by assignment pursuant to this Section 9.04(f).

(g) Any Lender may, at any time, assign all or a portion of its Term Loans (but not Revolving Loans, Other Revolving Loans or Swing Line Loans) to Holdings or any of its Subsidiaries, 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 2.11(a)(iii) or other customary procedures acceptable to the Administrative Agent and/or (y) open market purchases on a non-pro rata basis, provided that (i) the Borrower shall not make any Revolving Borrowing, Other Revolving Loans or Swing Line Loans to fund such assignment, (ii) any Term Loans that are so assigned will be automatically and irrevocably cancelled and the aggregate principal amount of the tranches and installments of the relevant Term Loans then outstanding shall be reduced pro rata by an amount equal to the par principal amount of such Term Loans, (iii) no Event of Default shall have occurred and be continuing and (iv) each Lender making such assignment to Holdings or any of its Subsidiaries acknowledges and agrees that in connection with such assignment, (1) Holdings or its Subsidiaries then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender's lack of knowledge of the Material Non-Public Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders.

(h) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Lender without the prior written consent of the Borrower; provided that, upon the inquiry by (i) any Lender to the Administrative Agent as to whether a specified potential assignee or prospective participant is on the Disqualified Lenders List or (ii) any potential assignee as to whether such potential assignee is on the Disqualified Lenders List the Administrative Agent shall provide such list of Disqualified Lenders to such Lender or potential assignee, as applicable; provided, further, that inclusion on the Disqualified Lenders List shall not apply retroactively to disqualify any persons that have previously acquired an assignment or participation in the Loan if such person was not included on the Disqualified Lenders List at the time of such assignment or participation. Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if any Lender was a Disqualified Lender at the time of the assignment of any Loans or Commitments to such Lender,

following written notice from the Borrower to such Lender and the Administrative Agent and otherwise in accordance with Section 2.19(b), as applicable: (1) such Lender shall promptly assign all Loans and Commitments held by such Lender to an Eligible Assignee (and the signature of such Disqualified Lender shall not be required on any such assignment); provided that (A) the Administrative Agent shall not have any obligation to the Borrower, such Lender or any other Person to find such a replacement Lender, (B) the Borrower shall not have any obligation to such Disqualified Lender or any other Person to find such a replacement Lender or accept or consent to any such assignment to itself or any other Person subject to the Borrower's consent in accordance with Section 9.04(b)(i) and (C) the assignment of such Loans and/or Commitments, as the case may be, shall be at par plus accrued and unpaid interest and fees; (2) such Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of any Class), all affected Lenders (or all affected Lenders of any Class), a Majority in Interest of Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that (x) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Disqualified Lender adversely and in a manner that is disproportionate to other affected Lenders shall require the consent of such Disqualified Lender; and (3) no Disqualified Lender is entitled to receive information provided solely to Lenders by the Administrative Agent or any Lender or will be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices or Borrowings, notices or prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II. Notwithstanding anything to the contrary herein, the Borrower (on behalf of itself and the other Loan Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Institution.

(i) Notwithstanding the foregoing, any Affiliated Lender shall be permitted, at its option, to contribute any Term Loans so assigned to such Affiliated Lender pursuant to this Section 9.04 to Holdings or any of its Subsidiaries for purposes of cancellation, which contribution may be made (including, with the Borrower's consent, to the Borrower, whether through Holdings or otherwise), in exchange for Qualified Equity Interests of Holdings or the Borrower or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred (including, if applicable, as a Permitted Refinancing) pursuant to Section 6.01 at such time.

#### SECTION 9.05 Survival.

All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any

investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and all other amounts payable hereunder, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. Notwithstanding the foregoing or anything else to the contrary set forth in this Agreement, in the event that, in connection with the refinancing or repayment in full of the credit facilities provided for herein, an Issuing Bank shall have provided to the Administrative Agent a written consent to the release of the Revolving Lenders from their obligations hereunder with respect to any Letter of Credit issued by such Issuing Bank (whether as a result of the obligations of the Borrower (and any other account party) in respect of such Letter of Credit having been collateralized in full by a deposit of cash with such Issuing Bank or being supported by a letter of credit that names such Issuing Bank as the beneficiary thereunder, or otherwise), then from and after such time such Letter of Credit shall cease to be a "Letter of Credit" outstanding hereunder for all purposes of this Agreement and the other Loan Documents, and the Revolving Lenders shall be deemed to have no participations in such Letter of Credit, and no obligations with respect thereto, under Section 2.05(e) or (f).

#### SECTION 9.06 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of an original executed counterpart of this Agreement.

#### SECTION 9.07 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.07, if and to the extent that the enforceability of any

provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Swing Line Lender or the Issuing Banks, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### SECTION 9.08 Right of Setoff.

If a Specified 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, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency, but not withholding or payroll accounts, employee benefits accounts, de minimis accounts or other accounts used exclusively for taxes or fiduciary or trust purposes) 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 the Borrower (excluding, for the avoidance of doubt, any Settlement Assets except to effect Settlement Payments such Lender is obligated to make to a third party in respect of such Settlement Assets or as otherwise agreed in writing between the Borrower and such Lender) against any of and all the obligations of the Borrower then due and owing under this Agreement held by such Lender or Issuing Bank, irrespective of whether or not such Lender or Issuing Bank shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender or Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender and applicable Issuing Bank shall notify the Borrower and the Administrative Agent of such setoff and application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender and each Issuing Bank under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or such Issuing Bank may have. Notwithstanding the foregoing, no amount set off from any Loan Party (other than the Borrower) shall be applied to any Excluded Swap Obligation of such Loan Party (other than the Borrower).

#### SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any federal court sitting in the Borough of Manhattan in the City of New York or, if that court does not have subject matter jurisdiction, in

any state court located in the City and County of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court except to the extent required by any Security Document to be brought in another jurisdiction pursuant to the terms of such Security Document. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings or the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.01. NOTHING IN ANY LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

#### SECTION 9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY 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 ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

#### SECTION 9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.



## SECTION 9.12 Confidentiality.

(a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (other than Excluded Affiliates) and its and their respective directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors and any numbering, administration or settlement service providers on a “need-to-know” basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be instructed to keep such Information confidential and any failure of such Persons acting on behalf of the Administrative Agent, any Issuing Bank or the relevant Lender to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent, such Issuing Bank or the relevant Lender, as applicable), (ii) to the extent requested or required by any governmental authority, regulatory authority or self-regulatory authority, required by applicable law, rule or regulation or by any subpoena or similar legal process or in connection with the exercise of remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder (including without limitation for purposes of establishing any appropriate due diligence defense) or any other pending legal, judicial or administrative proceeding or other compulsory process or upon the good faith determination by counsel that such Information should be disclosed in light of ongoing oversight or review of such Administrative Agent, Issuing Bank or Lender, as applicable, by any governmental or regulatory (including self-regulatory) authority having jurisdiction over the Administrative Agent, Issuing Bank or Lender or its Affiliates, as applicable; provided that (x) solely to the extent permitted by law and other than in connection with routine audits and reviews by regulatory and self-regulatory authorities, each Lender and the Administrative Agent shall promptly notify the Borrower of any such requested or required disclosure in connection with any legal or regulatory proceeding and (y) in the case of clause (ii) only, each Lender and the Administrative Agent shall use commercially reasonable efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, (iii) to any other party to this Agreement, (iv) to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (B) any actual or prospective counterparty (or its advisors) to any Swap Agreement or derivative transaction relating to any Loan Party or its Subsidiaries and its obligations under the Loan Documents or (C) any pledgee referred to in Section 9.04(d), in the case of each of the preceding clauses (A) through (C), other than to a Disqualified Lender; provided that any such disclosure under this clause (iv) shall be made subject to the acknowledgment and acceptance by such assignee or Participant, prospective assignee or Participant, actual or prospective counterparty (or its advisors) or pledgee, as applicable, that such Information is being disseminated on a confidential basis (on substantially the same terms set forth in this Section 9.12 or as is reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the customary market standards for dissemination of such type of Information, in the event of any electronic access through Intralinks, another website or similar electronic system or platform, which shall in any event require “click through” or other affirmative action on the part of the recipient to access such Information and acknowledge its confidentiality obligations in respect thereof, in each case on terms reasonably acceptable to the Borrower, (v) if required by any rating agency; provided that prior to any such disclosure, such rating agency shall have agreed in writing to maintain the confidentiality of such

Information, (vi) to service providers providing administrative and ministerial services solely in connection with the syndication and administration of the Loan Documents and the facilities (e.g., identities of parties, maturity dates, interest rates, etc.) on a confidential basis, or (vii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.12 or (y) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary, which source is not known (after due inquiry) by the recipient of such information to be subject to a confidentiality obligation. For the purposes hereof, “Information” means all information received from or on behalf of Holdings or the Borrower relating to Holdings, the Borrower, any other Subsidiary or their business other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Holdings, the Borrower or any Subsidiary. Notwithstanding the foregoing, provided that the Disqualified Lenders List has been shared with the Lenders, no such information shall be disclosed to a Disqualified Lender that constitutes a Disqualified Lender at the time of such disclosure without the Borrower’s prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12(a)) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

#### SECTION 9.13 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.

(a) A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, (1) upon the consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary (including pursuant to a permitted merger or amalgamation with a Subsidiary that is not a Loan Party or a designation as an Unrestricted Subsidiary) or becomes an Excluded Subsidiary or (2) upon the request of the Borrower, in connection with a transaction permitted under this Agreement, as a result of which such Subsidiary Loan Party ceases to be a Wholly Owned Subsidiary; provided that the release of any Subsidiary Loan Party from its obligations under the Loan Documents (i) if such Subsidiary Loan Party becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof and/or (ii) pursuant to preceding clause (2) of this Section 9.14(a), such release shall only be permitted if (y) after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be released, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time and (z) a Responsible Officer of the Borrower certifies to the Administrative Agent compliance with preceding clause (y); provided, further, that no such release shall occur if such Subsidiary Loan Party continues to be a guarantor in respect of the Second Lien Credit Agreement, any Incremental Equivalent Debt, any Other Term Loans, any Incremental Facility, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing in respect of any of the foregoing; provided, further, that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise, or (3) as provided in the Closing Date Intercreditor Agreement. Upon any sale or other transfer by any Loan Party (other than to any other Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral or upon any Collateral becoming an Excluded Asset, the security interests in such Collateral created by the Security Documents shall be automatically released. Upon the release of Holdings or any Subsidiary Loan Party from its Guarantee in compliance with this Agreement, the security interest in any Collateral owned by Holdings or such Subsidiary created by the Security Documents shall be automatically released. Upon the designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Agreement, the security interest created by the Security Documents in the Equity Interests of such new Unrestricted Subsidiary shall automatically be released. To the extent the release of any Lien in any Collateral 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 9.02), the security interest in such Collateral shall be automatically released. To the extent the release of any security interest in any Collateral is required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Loan Documents, the security interest in such Collateral shall be automatically

released. In addition, liens shall be released and guarantees released in accordance with the terms of the Security Documents and the Guarantee. Upon the Termination Date all obligations under the Loan Documents and all security interests created by the Security Documents shall be automatically released. Any such release shall not in any manner discharge, affect, or impair the Secured Obligations (other than those being discharged or released) or any Liens (other than those being discharged or 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 comprised of Excluded Assets or otherwise released in accordance with the provisions of the Loan Documents. In connection with any termination or release pursuant to this Section 9.14, without the further consent of any Lender, Issuing Bank or other Secured Party, the Administrative Agent or the Collateral Agent, as the case may be, shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence or to file or register in any office such termination or release so long as the Borrower or applicable Loan Party shall have provided the Administrative Agent or the Collateral Agent, as the case may be, such certifications or documents as the Administrative Agent or the Collateral Agent, as the case may be, shall reasonably request in order to demonstrate compliance with this Agreement. The Administrative Agent or the Collateral Agent, as the case may be, will, at the Borrower's expense, execute and deliver to the applicable Loan Party or to file or register in any office such documents as such Loan Party may reasonably request to subordinate its Lien on any property granted to or held by the Administrative Agent or the Collateral Agent, as the case may be, under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(ii) (but only pursuant to clauses (d) and (j) of the definition of "Permitted Encumbrances), (iv), (v), (xi), (xii), (xxii) (but only with respect to any such liens securing Indebtedness permitted under Section 6.01(a)(viii)), (xxiii), (xxix) or (xxxv).

(b) Each of the Lenders and each of the Issuing Banks irrevocably authorizes the Administrative Agent or the Collateral Agent, as the case may be, to (i) provide any release or evidence of release, termination or subordination contemplated by this Section 9.14 (and upon request by the Administrative Agent or the Collateral Agent, as the case may be, at any time, the Required Lenders will confirm in writing the Administrative Agent's authority or the Collateral Agent's authority, as the case may be, to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under any Loan Document, in each case in accordance with the terms of the Loan Documents and this Section 9.14), (ii) enter into subordination or intercreditor agreements with respect to Indebtedness to the extent the Administrative Agent or Collateral Agent is otherwise contemplated herein as being a party to such intercreditor or subordination agreement, in each case to the extent such agreements, at the time they are first entered into, are substantially consistent with the terms set forth on Exhibit E-1, E-2 or E-3 annexed hereto, together with (A) any immaterial changes and (B) material changes thereto in light of prevailing market conditions, which material changes shall 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 and/or Collateral 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 and/or Collateral Agent's execution thereof, in each case in form and substance

reasonably satisfactory to the Administrative Agent and/or Collateral Agent (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans); and (iii) enter into and sign for and on behalf of the Lenders as Secured Parties the Security Documents for the benefit of the Lenders and the other Secured Parties.

SECTION 9.15 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks 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 Joint Lead Arrangers, the Issuing Banks 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, that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto and it is not relying on the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks or the Lenders for such advice, 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 of the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings, any of their respective Affiliates or any other Person and (B) none of the Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders 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 Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and 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 Administrative Agent, the Joint Lead Arrangers, the Issuing Banks and the Lenders 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, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Joint Lead 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 9.16 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 the Administrative Agent or any Lender shall receive interest in an amount that exceeds the

Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

#### SECTION 9.17 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower or any other Loan Party in respect of any such sum due from it to the Secured Parties hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Requirements of Law).

SECTION 9.18 Intercreditor Agreement. Each Secured Party hereby agrees that the Administrative Agent and/or Collateral Agent may enter into the Closing Date Intercreditor Agreement and any other intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01, any applicable Liens on Collateral permitted pursuant to Section 6.02 and, in each case, together with the defined terms referenced therein) on its behalf and agrees to be bound by the terms thereof and, in each case, consents and agrees to the appointment of Barclays Bank PLC (or its affiliated designee, representative, agent or successor) on its behalf as collateral agent, respectively, thereunder. Each Lender (a) understands, acknowledges and agrees that Liens shall be created on the Collateral pursuant to the Second Lien Loan Documents, which Liens shall be subject to the terms and conditions of the Closing Date Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Closing Date Intercreditor Agreement or any other applicable Intercreditor Agreement (if entered into) and (c) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Closing Date

Intercreditor Agreement and, if applicable, any other Intercreditor Agreement (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements (subject, if applicable, to the last sentence of Section 9.02(b)), and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof).

#### SECTION 9.19 Cashless Settlement.

Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

#### SECTION 9.20 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 any such parties, 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

#### SECTION 9.21 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender under the Credit Agreement and (y) covenants, from the date such Person became a Lender under the Credit Agreement to the date such Person ceases being a Lender

party to the Amended Credit Agreement, for the benefit of the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time (“PTEs”), such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Facility Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender under the Credit Agreement and (y) covenants, from the date such Person became a Lender under the Credit Agreement to the date such Person ceases being a Lender under the Amended Credit Agreement, for the benefit of the Agents and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agents under this Agreement, any Loan Document or any documents related to hereto or thereto),



(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the obligations under any Loan Document),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement is a fiduciary under ERISA or the US Internal Revenue Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agents or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or the Amended Credit Agreement.

(c) The Agents hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and the Amended Credit Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**HOYA INTERMEDIATE, LLC**  
a Delaware limited liability company

as Holdings

By: \_\_\_\_\_  
Name:  
Title:

**HOYA MIDCO, LLC**  
a Delaware limited liability company

as Borrower

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Project Cubs First Lien Credit Agreement]*

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**BARCLAYS BANK PLC,**  
as Administrative Agent,  
an Issuing Bank, Swing Line Lender and a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Project Cubs First Lien Credit Agreement]*

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THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THE INITIAL TERM LOANS UNDER THIS AGREEMENT ARE TREATED AS HAVING BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. BEGINNING NO LATER THAN MAY 22, 2020, A LENDER MAY, UPON REQUEST, OBTAIN FROM THE BORROWER THE ISSUE PRICE, ISSUE DATE, AMOUNT OF OID AND YIELD TO MATURITY OF EACH INITIAL TERM LOAN MADE BY SUCH LENDER BY CONTACTING THE BORROWER AS SPECIFIED ON SCHEDULE 9.01.

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CREDIT AGREEMENT

dated as of

May 22, 2020

among

HOYA INTERMEDIATE, LLC,  
as Holdings,

HOYA MIDCO, LLC,  
as Borrower,

the Lenders party hereto

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Administrative Agent and Collateral Agent

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CREDIT AGREEMENT dated as of May 22, 2020 (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) among Hoya Intermediate, LLC, a Delaware limited liability company (“Holdings”), Hoya Midco, LLC, a Delaware limited liability company (the “Borrower”), the Lenders party hereto and Wilmington Trust, National Association, solely in its capacity as Administrative Agent and Collateral Agent.

Preliminary Statements:

WHEREAS, in connection with the Transaction (as defined below) and to provide for the working capital needs and general corporate requirements (including to finance permitted Investments, acquisitions, capital expenditures and Restricted Payments) of Holdings and its Restricted Subsidiaries, the Borrower has requested that the Lenders extend credit in the form of Initial Term Loans in an aggregate principal amount of \$260,000,000 on the Effective Date.

WHEREAS, the proceeds of the Loans borrowed on the Effective Date will be used to (x) finance a portion of the Transaction (including Transaction Costs), (y) fund any upfront fees in connection with the Loans (or, to the extent any fees take the form of original issue discount, such Loans will reflect such original issue discount) and (z) finance the working capital needs and general corporate requirements of Holdings and its Restricted Subsidiaries.

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

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

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“ABR” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(2).

“Acceptable Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Acceptance and Prepayment Notice” means an irrevocable written notice from a Term Lender accepting a Solicited Discounted Prepayment Offer to make a Discounted Term Loan Prepayment at the Acceptable Discount specified therein pursuant to Section 2.11(a)(iii)(D) substantially in the form of Exhibit M.

“Acceptance Date” has the meaning specified in Section 2.11(a)(iii)(D)(2).

“Accepting Lenders” has the meaning specified in Section 2.24(a).

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary (any of the foregoing, a “Pro Forma Entity”) for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined as if references to Holdings, the Borrower and the Restricted Subsidiaries in the definition of “Consolidated EBITDA” were references to such Pro Forma Entity and its subsidiaries that will become Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity.

“Acquired Entity or Business” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Additional Term Lender” means, at any time, any bank, financial institution or other institutional lender or investor (other than any natural person) that agrees to provide any portion of any Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.21; provided that each Additional Term Lender shall be subject to the approval of the Administrative Agent if such consent would be required under Section 9.04(b) for an assignment of Term Loans or Term Commitments, as applicable, to such bank, financial institution or other institutional lender or investor (such approval in each case not to be unreasonably withheld, conditioned or delayed) and the Borrower.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; provided that with respect to the Initial Term Loans only, the Adjusted LIBO Rate for any Interest Period shall not be less than 1.00% per annum.

“Administrative Agent” means Wilmington Trust, National Association, solely in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders in writing.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affected Class” has the meaning specified in Section 2.24(a).

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

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified (which, for purposes of Section 9.04 with respect to each Initial Lender shall include funds, accounts and clients managed, advised or sub-advised by such Initial Lender, GSO Capital Partners LP or its Affiliates, respectively).

“Affiliated Debt Fund” means any Affiliated Lender that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and with respect to which the Sponsor and investment vehicles managed or advised by the Sponsor that are not engaged primarily in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course do not make investment decisions for such entity.

“Affiliated Lender” means, at any time, any Lender that is any Person (other than Holdings or any of its Subsidiaries) contemplated by the definition of Sponsor at such time.

“Agent” means any of the Administrative Agent, the Collateral Agent and any permitted successors and assigns of the foregoing in such capacity, and “Agents” means two or more of them.

“Agent Fee Letter” means that certain Fee Letter dated as of the Effective Date between the Borrower and the Agent, in each case relating to the transactions contemplated by this Agreement.

“Agent Parties” has the meaning given to such term in Section 9.01(c).

“Agreement” has the meaning given to such term in the introductory paragraph hereto.

“Agreement Currency” has the meaning assigned to such term in Section 9.17.

“AHYDO” means an “applicable high yield discount obligation” within the meaning of Section 163(i) of the Code.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1.00%, (c) the Adjusted LIBO Rate for the applicable Loan on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a deposit in Dollars with a maturity of one (1) month plus 1.00% and (d) 2.00%; provided that, solely for purposes of the foregoing, the Adjusted LIBO Rate for any day shall be calculated using the LIBO Rate on such day at approximately 11:00 a.m. (New York City time) for a deposit in Dollars with a maturity of one (1) month. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of Federal Funds Effective Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Applicable Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Applicable Prepayment Premium” has the meaning assigned to such term in Section 2.11(a)(i).

“Applicable Rate” means, for any day, with respect to any Initial Term Loan, (i) 8.50% per annum, in the case of an ABR Loan, or (ii) 9.50% per annum, in the case of a Eurodollar Loan; provided that if a PIK Election has been made with respect to any Initial Term Loans in accordance with Section 2.07(f) for any PIK Interest Period ending on and after the second anniversary of the Effective Date but prior to the third anniversary of the Effective Date, the Applicable Rate for such PIK Interest Period shall be (i) 4.00% per annum, in the case of an ABR Loan, or (ii) 5.00% per annum, in the case of a Eurodollar Loan.

“Approved Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments”.

“Approved Foreign Bank” has the meaning assigned to such term in the definition of “Permitted Investments”.

“Approved Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its activities (or temporarily warehouses loans or similar extensions of credit for any such Person) and that is administered, advised, sub-advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises, manages, sub-advises or underwrites a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04(b)), substantially in the form of Exhibit A or any other form reasonably approved by the Administrative Agent.

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor employed 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 2.11(a)(iii)(A); 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 Amount” means, as of any date of determination (the “Reference Date”), a cumulative amount equal to (without duplication):

(a) the greater of \$30,000,000 and 30% of Consolidated EBITDA calculated on a Pro Forma Basis for the Test Period then last ended (the “Starter Basket”), plus

(b) an amount equal to (x) the cumulative amount of Excess Cash Flow (which amount shall not be less than zero in any fiscal year and shall not be reduced by any negative Excess Cash Flow) of Holdings and its Restricted Subsidiaries for any fiscal year prior to the Reference Date (commencing with the fiscal year ending December 31, 2020), minus (y) the portion of Excess Cash Flow that has been (or is required to be) applied prior to the Reference Date to the prepayment of Term Loans in accordance with Section 2.11(d) and minus (z) the aggregate amount of voluntary prepayments and repurchases of Term Loans and Senior Secured First Lien Indebtedness to the extent such prepayments and repurchases reduced the Excess Cash Flow payment that would have otherwise been required to be made pursuant to Section 2.11(d) for any period prior to the Reference Date pursuant to the first proviso of Section 2.11(d), plus

(c) to the extent not included in Consolidated Net Income, returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings and its Restricted Subsidiaries on Investments made using the Available Amount and cash received from the sale of Investments made using the Available Amount or pursuant to Section 6.04(o) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiaries to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus

(d) Investments of Holdings, the Borrower or any of the Restricted Subsidiaries in any Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount that has been re-designated as a Restricted Subsidiary or that has been merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary, or the assets of which has been transferred to a Loan Party or any of its Restricted Subsidiaries (up to the fair market value determined in good faith by the Borrower of the Investments of Holdings, the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation), plus

(e) to the extent not included in Consolidated Net Income, the Net Proceeds of a sale or other Disposition of any Investment in an Unrestricted Subsidiary (including the issuance of stock of an Unrestricted Subsidiary), non-Subsidiary joint venture or minority investment made using the Available Amount received by Holdings, the Borrower or any Restricted Subsidiary (or the fair market value of the assets thereof that have been transferred to Holdings, the Borrower or any Restricted Subsidiary), plus

(f) to the extent not included in Consolidated Net Income, dividends, profits, or other distributions, returns on capital or similar amounts received by Holdings, the Borrower or any Restricted Subsidiary from an Investment in an Unrestricted Subsidiary, non-Subsidiary joint venture or minority investment made using the Available Amount (or from the sale of the assets thereof) (excluding (x) any returns, profits, distributions and similar amounts paid by any Unrestricted Subsidiary to Holdings or any Restricted Subsidiary in respect of the payment of any tax liability of such Unrestricted Subsidiary and (y) any amount applied as an Available Equity Amount), plus



(g) to the extent not included in Consolidated Net Income, the aggregate proceeds and the fair market value (as reasonably determined by the Borrower) of marketable securities or other property received by Holdings, the Borrower or a Restricted Subsidiary since the Effective Date from any Person other than the Borrower or a Restricted Subsidiary (excluding any amount applied as an Available Equity Amount), plus

(h) the aggregate amount of any Retained Declined Proceeds since the Effective Date, to the extent not applied to prepay any pari passu Indebtedness or any other secured or subordinated Junior Financing, as contemplated by Section 2.11(e) and Section 6.07(b).

“Available Equity Amount” means a cumulative amount equal to (without duplication):

(a) the Net Proceeds of new public or private issuances of Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as Cure Amounts and any Qualified Equity Interests issued pursuant to Section 6.04(o)) in Holdings or any parent of Holdings which are contributed to Holdings or the Borrower, plus

(b) capital contributions (excluding capital contributions the proceeds of which will be applied as Cure Amounts) received by Holdings or the Borrower after the Effective Date in cash or Permitted Investments (other than in respect of any Disqualified Equity Interest), plus

(c) the net cash proceeds received by Holdings, the Borrower or any Restricted Subsidiary from Indebtedness and Disqualified Equity Interest issuances issued after the Effective Date and which have been exchanged or converted into Qualified Equity Interests, plus

(d) returns, profits, distributions and similar amounts received in cash or Permitted Investments by Holdings, the Borrower or any Restricted Subsidiary on Investments made using the Available Equity Amount,

in each case, to the extent such amount is Not Otherwise Applied pursuant to the Available Amount.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and

(b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended, or any similar federal or state law for the relief of debtors.

“Basel III” means: (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011 as amended, supplemented or restated; and (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers, board of directors, manager or managing member of such Person or the functional equivalent of the foregoing or any committee thereof duly authorized to act on behalf of such board, manager or managing member, (c) in the case of any partnership, the board of directors or board of managers of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

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

“Borrower” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 5.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by the Borrower to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.11(a)(iii)(B).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by the Borrower of offers for, and the corresponding acceptance by a Term Lender of, a voluntary prepayment of Term Loans at a specified range at a discount to par pursuant to Section 2.11(a)(iii)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by the Borrower of offers for, and the subsequent acceptance, if any, by a Term Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.11(a)(iii)(D).

“Borrowing” means Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means \$5,000,000.

“Borrowing Multiple” means \$1,000,000.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Requirements of Law to remain closed and, if such day relates to any Eurodollar Loan, any such day that is also a London Banking Day.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capitalized Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP. For purposes of Section 6.02, a Capital Lease Obligation shall be deemed to be secured by a Lien on the property being leased and such property shall be deemed to be owned by the lessee.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect as of December 31, 2018, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP; provided, further, that all obligations of any Person that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect and as applied on December 31, 2018 (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a

Capitalized Lease) for purposes of this Agreement regardless of any change in GAAP which becomes effective after December 31, 2018 that would otherwise require such obligation to be recharacterized as a Capitalized Lease.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by Holdings and its Restricted Subsidiaries during such period in respect of 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 Holdings and its Restricted Subsidiaries.

“Cash Management Obligations” means (a) obligations of Holdings, the Borrower or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Casualty Event” means any event that gives rise to the receipt by Holdings, the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in an amount in excess of \$20,000,000 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.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Control” means (a) the failure of Holdings prior to an IPO, or, after the IPO, the IPO Entity, directly or indirectly through wholly owned subsidiaries, to own all of the Equity Interests of the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of members of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy, ownership of Equity Interests or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 35% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one or more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the First Lien Credit Agreement or the documentation governing any secured or subordinated Junior Financing or other Material Indebtedness.

For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered.

“Change in Law” means: (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by the United States, Canada, the European Union, United Kingdom or other foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a “Change in Law”, to the extent enacted, adopted, promulgated, implemented or issued after the date of this Agreement, but only to the extent such rules, regulations, or published interpretations or directives are applied to Holdings and its Subsidiaries by the Administrative Agent or any Lender in substantially the same manner as applied to other similarly situated borrowers under comparable syndicated credit facilities, including, without limitation, for purposes of Section 2.15.

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Term Loans or Other Term Loans, (b) any Commitment, refers to whether such Commitment is a Term Commitment or Other Term Commitment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Commitments and Other Term Loans that have different terms and conditions shall be construed to be in different Classes.

“Closing Date Intercreditor Agreement” means the Pari Passu Intercreditor Agreement dated as of the Effective Date, substantially in the form of Exhibit E-1 to the Existing First Lien Credit Agreement, among, *inter alia*, the Administrative Agent, the Collateral Agent, the Existing First Lien Administrative Agent (and each other Senior Representative for holders of Indebtedness permitted by this Agreement to be secured by the Collateral, that becomes party thereto after the Effective Date), Holdings, the Borrower and the Subsidiary Loan Parties party thereto from time to time.

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

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Security Documents as security for the Secured Obligations.

“Collateral Agent” has the meaning given to such term in Section 8.01(b) and its successors in such capacity as provided in Article VIII.

“Collateral Agreement” means the Collateral Agreement among the Loan Parties party thereto and the Collateral Agent, substantially in the form of Exhibit D.

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

(a) the Administrative Agent shall have received from (i) Holdings, the Borrower and each of the Restricted Subsidiaries (other than any Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee Agreement, in substantially the form specified therein, duly executed and delivered on behalf of such Person and (ii) Holdings, the Borrower and each Subsidiary Loan Party either (x) a counterpart of each applicable Security Document duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Subsidiary Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), either (A) to the extent applicable, a supplement to each applicable Security Document, substantially the form specified therein, duly executed and delivered on behalf of such Person or (B) a Security Document, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, to the extent reasonably requested by the Administrative Agent, documents of the type referred to in Section 4.01(d) within the time periods set forth in Sections 5.11 and 5.12;

(b) all outstanding Equity Interests of the Borrower and each Restricted Subsidiary (other than any Equity Interests constituting Excluded Assets) owned by or on behalf of any Loan Party, shall have been pledged, charged or otherwise made subject to security pursuant to the applicable Security Document, and, subject to the Closing Date Intercreditor Agreement and any other applicable intercreditor agreements to which the Administrative Agent and/or Collateral Agent is party, the Collateral Agent shall have received certificates, if any, representing all such Equity Interests to the extent constituting “certificated securities”, together with all certificates, documents of title and other documentary evidence of ownership and undated stock powers or other instruments of transfer with respect thereto endorsed in blank, in each case, to the extent required to perfect the security interest therein in the jurisdiction of the issuer;

(c) if any Indebtedness for borrowed money of Holdings, the Borrower or any Subsidiary in a principal amount of \$20,000,000 or more is owing by such obligor to any Loan Party and such Indebtedness shall be evidenced by a promissory note, such promissory note shall be pledged or otherwise secured pursuant to the applicable Security Document, and, subject to the Closing Date Intercreditor Agreement and any other applicable intercreditor agreements to which the Administrative Agent and/or Collateral

Agent is party, the Collateral Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank; provided, however, that the foregoing delivery requirement with respect to any intercompany indebtedness may be satisfied by delivery of an omnibus or global intercompany note executed by all Loan Parties as payees and all such obligors as payors;

(d) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and Intellectual Property Security Agreements with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral, for the filing with the United States Patent and Trademark Office and the United States Copyright Office to the extent required by this Agreement, the Security Documents, Requirements of Law and as reasonably requested by the Administrative Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, this Agreement, the Closing Date Intercreditor Agreement, the Security Documents and the other provisions of the term "Collateral and Guarantee Requirement", shall have been filed, registered or recorded or delivered to the Administrative Agent or its designee for filing, registration or recording; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property (provided that, if a mortgage tax will be owed on the entire amount of the Secured Obligations evidenced hereby, then, to the extent permitted by, and in accordance with, applicable law, the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Secured Obligations allocated to the applicable Mortgaged Property and (y) the estimated fair market value of the Mortgaged Property at the time the Mortgage is entered into, as reasonably determined by the Borrower, which in the case of clause (y) will result in a limitation of the Secured Obligations secured by the Mortgage to such amount), (ii) a policy or policies of title insurance (or marked unconditional commitment to issue such policy or policies) issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor's rights endorsement) as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates (it being agreed that the Administrative Agent shall accept zoning reports from a nationally recognized zoning company in lieu of zoning endorsements to such title insurance policies), in an amount equal to the fair market value of such Mortgaged Property or as otherwise reasonably agreed by the parties; provided that in no event will the Borrower be required to obtain independent appraisals of such Mortgaged Properties, unless required by FIRREA, (iii) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and if any Mortgaged Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be located in special flood hazard area, a duly executed notice about special flood hazard area status and flood disaster assistance and evidence of such

flood insurance as provided in Section 5.07(b), (iv) in each case if reasonably requested by the Administrative Agent, a customary legal opinion with respect to each such Mortgage, from counsel qualified to opine in each jurisdiction (a) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (b) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized or incorporated, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other customary matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (v) a (a) survey in compliance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys or such other requirements as in effect at the time and otherwise reasonably satisfactory to the Administrative Agent or (b) existing survey, Express Map or other similar documentation that is available together with a no change affidavit of such Mortgaged Property and for which survey coverage is available for the policies of title insurance referenced in clause (ii) above without the need for such new or updated surveys, and (vi) evidence of payment of title insurance premiums and expenses and all recording, mortgage, transfer and stamp taxes and fees payable in connection with recording the Mortgage, any amendments thereto and any fixture filings in appropriate county land office(s). Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until, (a) if such Mortgage relates to a property not located in a flood zone, at least five (5) Business Days in advance of such execution and delivery or (b) if such Mortgage relates to a property located in a flood zone, at least fourteen (14) days in advance of such execution and delivery, each Lender has received the documents described in clause (e)(iii) above and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Administrative Agent in writing that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (i) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as the Administrative Agent and the Borrower reasonably agree in writing that the cost or burden of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any adverse tax consequences (that are not de minimis) to Holdings and its Affiliates (including the imposition of withholding or other material taxes)), is excessive in relation to the benefits to be obtained by the Lenders therefrom; (ii) Liens required to be granted from time to time pursuant to the term "Collateral and Guarantee Requirement" shall be subject to exceptions and limitations set forth in this Agreement and the Security Documents and shall be subject in all respects to the Closing Date Intercreditor Agreement and any other intercreditor agreement to which the Administrative Agent and/or Collateral Agent is a party; (iii) in no event shall (x) control agreements or other control or similar arrangements be required with respect to cash, Permitted Investments, other deposit accounts, securities and commodities accounts (including securities entitlements and related assets), letter of credit rights or other assets requiring perfection by control (but not, for avoidance of doubt, possession) or (y) landlord lien waivers, bailee waivers,



warehouseman letters, estoppels, or collateral access letters be required; (iv) in no event shall any Loan Party be required to complete any filings or other action with respect to the perfection of security interests in any jurisdiction outside of the United States (or any state, commonwealth or territory thereof or the District of Columbia), or to perfect or make enforceable any security interests in any such assets (it being understood that all security granted by a Loan Party (other than Mortgages) shall be governed by the law of the state of New York; (v) in no event shall any Loan Party be required to complete any filings or other action with respect to perfection of security interests in assets subject to certificates of title beyond the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party); (vi) other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party), no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$20,000,000; (vii) in no event shall any Loan Party be required to complete any filings or other action (including entering into any source code escrow arrangements or seeking registration of any Copyrights) with respect to security interests in Intellectual Property beyond the filing of Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office; (viii) no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements (and, if applicable, corresponding or customary filings in the country of organization of any other Loan Party)); (ix) in no event shall environmental reports be required to be delivered to the Administrative Agent, the Collateral Agent or the Lenders and (x) in no event shall the Collateral include any Excluded Assets. The Administrative Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date) and any other obligations under this definition where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement (including as set forth on Schedule 5.14) or the Security Documents.

“Commitment” means with respect to any Lender, its Term Commitment, Other Term Commitment of any Class or any combination thereof (as the context requires).

“Commitment Letter” means that certain Commitment Letter, dated as of May 13, 2020, by and between GSO Capital Partners LP and Hoya Midco, LLC.

“Company” means Hoya Topco, LLC, a Delaware limited liability company.

“Compliance Certificate” means the certificate required to be delivered pursuant to Section 5.01(d), substantially in the form of Exhibit Q.

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period, plus:

(a) without duplication and to the extent deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, the sum of (A) premium payments, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) permitted to be incurred hereunder plus (B) the portion of rent expense with respect to such period under Capitalized Leases that is treated as interest expense in accordance with GAAP plus (C) the implied interest component of synthetic leases with respect to such period plus (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk in respect of Indebtedness, net of interest income and gains on such hedging obligations or such derivative instruments plus (E) bank and letter of credit fees and banker’s acceptance fees and costs of surety bonds in connection with financing activities, plus (F) any commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility;

(ii) provision for taxes based on income, profits or capital and sales and gross sales taxes, including federal, foreign, state, franchise, excise, and similar taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations;

(iii) Non-Cash Charges as elected by the Borrower;

(iv) [reserved];

(v) extraordinary charges, expenses or losses in accordance with GAAP;

(vi) unusual or non-recurring charges, expenses or losses (including any unusual or non-recurring operating expenses directly attributable to the implementation of cost savings initiatives), integration costs, severance, relocation costs, office and facilities’ opening costs and other business optimization expenses (including related to new product introductions and new system design and implementation costs), recruiting costs and fees, signing fees, expenses, costs and bonuses, retention or completion bonuses, contract termination costs, transaction fees and expenses, transition costs, systems establishment costs, costs related to closure/consolidation of office and facilities, costs related to the implementation of operational and reporting systems and technology initiatives, consulting fees and expenses, any one time expense relating to enhanced accounting function or other transaction costs (including those associated with becoming a standalone entity or a public company), and non-recurring Intellectual Property development, curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities) or any other costs incurred in connection with any of the foregoing;

(vii) restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to the Transaction and other acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements;

(viii) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary deducted (and not added back in such period) in calculating Consolidated Net Income;

(ix) (A) management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses permitted to be paid under this Agreement and related indemnities paid or accrued to equity holders of Holdings (and their Affiliates) and director fees and expenses and (B) the amount of expenses relating to payments made to option holders of Holdings or any Holdings Parent in connection with, or as a result of, any distribution being made to shareholders of such Person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted by the Loan Documents;

(x) losses on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(xi) any non-cash loss attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such loss has not been realized);

(xii) any loss relating to amounts paid in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income for such period;

(xiii) any gain relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (d)(iv) and (d)(v) below;

(xiv) any costs or expenses incurred by Holdings, the Borrower or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of Holdings or Net Proceeds of an issuance of Equity Interests of Holdings (other than Disqualified Equity Interests), or repurchase of Equity Interests of Holdings from employees, directors or consultants;

(xv) any net pension or other post-employment benefit costs 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 715, and any other items of a similar nature;

(xvi) any other add-backs and adjustments previously identified and agreed to by the Joint Lead Arrangers (as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date), including all such add-backs and adjustments set forth in the Sponsor Model or the Information Memorandum (in each case, as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date);

(xvii) the amount of losses on Dispositions of accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xviii) any increase in expenses resulting from the revaluation of inventory (including any impact of changes of inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments;

(xix) charges, losses or expenses to the extent indemnified or insured or reimbursable, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days) by a third party;

(xx) [reserved]; and

(xxi) to the extent that any Holdings Parent Specified Expenses would have been added back to Consolidated EBITDA pursuant to clauses (a)(i) through (xx) above had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses.

plus

(b) without duplication, the amount of “run rate” cost savings, operating expense reductions, other operating improvements and “run rate” synergies related to the Transaction, any Specified Transaction, any restructuring, cost saving initiative or other initiative projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken, in each case on or prior to the date that is eighteen (18) months after the end of the relevant Test Period (which shall be deemed to be the Effective Date for any actions initiated prior to the Effective Date) (which cost savings, operating expense reductions, other operating improvements and synergies shall be added to

Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; provided that (A) a Financial Officer of the Borrower shall certify in a Compliance Certificate that in its good faith judgment such cost savings are reasonably identifiable, reasonably anticipated to be realized, and factually supportable and (B) no cost savings, operating expense reductions, other operating improvements or synergies shall be added pursuant to this clause (b) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions or synergies that are included in clauses (a)(vi) and (a)(vii) above or in the definition of "Pro Forma Adjustment" (it being understood and agreed that "run rate" shall mean the full recurring benefit that is associated with any action taken); provided, further, that any amounts added back pursuant to this clause (b) (together with any anticipated "run rate" synergies added to the calculation of Consolidated EBITDA pursuant to the definition of "Pro Forma Adjustment"), shall not exceed, in the aggregate for such period, 25% of Consolidated EBITDA (as determined after giving effect to all such amounts added pursuant to this clause (b) and the definition of "Pro Forma Adjustment"); provided, further that, for the avoidance of doubt, the amount of any such (x) items resulting from, or in connection with, the Transactions and (y) items that would be permitted to be included pursuant to clause (a)(xvi) above, in each case, shall not be subject to or included in the calculation of such 25% limitation.

plus

(c) to the extent covered by business interruption insurance and actually reimbursed or otherwise paid in cash, expenses or losses relating to business interruption or, so long as Holdings or the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

less

(d) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:

- (i) unusual or non-recurring gains;
- (ii) non-cash gains (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);
- (iii) gains on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(iv) any non-cash gain attributable to the mark to market movement in the valuation of any Equity Interests, and hedging obligations or other derivative instruments (in each case, including pursuant to Financial Accounting Standards Codification No. 815—Derivatives and Hedging but only to the extent the cash impact resulting from such gain has not been realized);

(v) any gain relating to amounts received in cash prior to the stated settlement date of any hedging obligation that has been reflected in Consolidated Net Income in such period;

(vi) the amount of any minority interest income consisting of losses attributable to minority interests or non-controlling interests in any non-wholly owned Restricted Subsidiary;

(vii) [reserved];

(viii) any loss relating to hedging obligations associated with transactions realized in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated EBITDA pursuant to clauses (a)(xi) and (a)(xii) above;

in each case, as determined on a consolidated basis for Holdings and the Restricted Subsidiaries in accordance with GAAP; provided that:

(I) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of Financial Accounting Standards Codification No. 815—Derivatives and Hedging,

(II) there shall be included in determining Consolidated EBITDA for any period, without duplication, (A) to the extent not included in Consolidated Net Income, the Acquired EBITDA of any Person, business, line of business, division, business unit or asset acquired by Holdings, the Borrower or any Restricted Subsidiary during such period (other than any Unrestricted Subsidiary) to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business, line of business, division, business unit or assets to the extent not so acquired) (each such Person, property, business, line of business, division, business unit or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), in each case based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis and (B) an adjustment equal to the amount of the Pro Forma Adjustment for such period (including the portion thereof occurring prior to such acquisition or conversion), subject to the limitations set forth in clause (b) above;

(III) there shall be (A) to the extent included in Consolidated Net Income, excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business, line of business, division, business unit or asset (other than any Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations in accordance with GAAP (other than (x) if so classified on the basis that it is being held for sale unless such sale has actually occurred during such period and (y) for periods prior to the applicable sale, transfer or other disposition, if the Disposed EBITDA of such Person, property, business, line of business, division, business unit or asset is positive (i.e., if such Disposed EBITDA is negative, it shall be added back in determining Consolidated EBITDA for any period)) by Holdings, the Borrower or any Restricted Subsidiary during such period (each such Person, property, business, line of business, division, business unit or asset so sold, transferred or otherwise disposed of, closed or classified, a “Sold Entity or Business”), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), in each case based on the Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis and (B) to the extent not included in Consolidated Net Income, included in determining Consolidated EBITDA for any period in which a Sold Entity or Business is disposed, an adjustment equal to the Pro Forma Disposal Adjustment with respect to such Sold Entity or Business (including the portion thereof occurring prior to such disposal); and

(IV) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA any expense (or income) as a result of adjustments recorded to contingent consideration liabilities relating to the Transaction (as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date) or any Permitted Acquisition (or other Investment permitted hereunder).

For the purposes of determining the Senior Secured First Lien Net Leverage Ratio, the Senior Secured Net Leverage Ratio or the Total Net Leverage Ratio for any relevant Test Period, Consolidated EBITDA shall be deemed to equal (a) \$36,169,788 for the fiscal quarter ended March 31, 2019, (b) \$28,424,426 for the fiscal quarter ended June 30, 2019, (c) \$27,144,872 for the fiscal quarter ended September 30, 2019 and (d) \$35,082,355 for the fiscal quarter ended December 31, 2019 (it being understood that such amounts are subject to adjustments, as and to the extent otherwise contemplated in this Agreement, in connection with any Pro Forma Adjustment, Pro Forma Disposal Adjustment or any calculation on a Pro Forma Basis).

“Consolidated Net Income” means, for any period, the net income (loss) of Holdings and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding, without duplication;

- (a) extraordinary items for such period in accordance with GAAP;
- (b) the cumulative effect of a change in accounting principles during such period;

(c) any accruals, payments, fees, costs and expenses (including rationalization, legal, tax, structuring, financial advisory, investment banking, any transaction or retention bonus or similar payment and fees, costs and expenses of any counsel, consultants or other advisors and other costs and expenses) incurred during such period, or any amortization thereof for such period, in connection with the Transactions (including Transaction Costs), any Specified Transactions, any non-recurring costs to acquire equipment to the extent not capitalized in accordance with GAAP, Investments (including any earn-outs), Restricted Payments, Dispositions, recapitalization, issuances of Indebtedness or Equity Interests (including any initial public offering) or repayment of debt, refinancing transactions or amendment or other modification of any debt instrument, and restructurings, workouts and extensions and refinancings of any of the foregoing, non-competition agreements, one-time accruals, up-front fees, financing fees, commitment fees, costs, expenses or premiums related to any repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of or waiver or consent relating to any debt instrument (in each case, including the Transaction Costs and any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed and including costs and expenses of the Administrative Agent and Lenders that are reimbursed and fees paid to the Permitted Holders) and any charges or non-recurring merger or amalgamation costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460); provided that any such accruals, payments and expenses related to unconsummated transactions shall not, together with any accruals, payments and expenses related to unconsummated transactions added back pursuant to clause (a)(vi) of the definition of “Consolidated EBITDA”, exceed \$5,000,000 in the aggregate in any four-quarter fiscal period;

(d) any income (loss) for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments;

(e) accruals and reserves that are established or adjusted as a result of the Transactions or any Permitted Acquisition or other Investment not prohibited under this Agreement in accordance with GAAP (including any adjustment of estimated payouts on earn-outs) or changes as a result of the adoption or modification of accounting policies during such period;

(f) any income (loss) attributable to deferred compensation plans or trusts;

(g) stock-based award compensation expenses;

(h) the amount of any expense required to be recorded as compensation expense related to contingent transaction consideration;

(i) currency translation gains and losses related to currency remeasurements of assets, liabilities or indebtedness (including the net loss or gain resulting from hedging agreements for currency exchange risk and revaluations of intercompany balances);



(j) to the extent that any Holdings Parent Specified Expenses would have been included in Consolidated Net Income had such charge, tax or expense been incurred directly by Holdings, such Holdings Parent Specified Expenses; and

(k) the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to Holdings and its Restricted Subsidiaries), as a result of the Transactions, any acquisition or Investment consummated prior to the Effective Date and any Permitted Acquisitions (or other Investment not prohibited hereunder) or the amortization or write-off of any amounts thereof.

There shall be included in Consolidated Net Income, without duplication, any dividends or other distributions received in cash or other Permitted Investments from Unrestricted Subsidiaries.

“Consolidated Senior Secured First Lien Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured First Lien Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured First Lien Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Senior Secured Net Indebtedness” means, as of any date of determination, the aggregate amount of Senior Secured Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Senior Secured Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and any such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Total Net Indebtedness” means, as of any date of determination, the aggregate amount of Indebtedness of Holdings and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, purchase money indebtedness, drawn but unreimbursed letters

of credit, the principal portion of obligations in respect of Capitalized Leases, earnouts and similar obligations, in each case to the extent required to be recognized on the balance sheet of Holdings and its Restricted Subsidiaries as indebtedness in accordance with GAAP and such Indebtedness of others that is Guaranteed by Holdings or any of its Restricted Subsidiaries, minus the aggregate amount of cash and Permitted Investments of Holdings and its Restricted Subsidiaries (excluding cash and Permitted Investments that are listed as “restricted” on the consolidated balance sheet of Holdings and its Restricted Subsidiaries as of such date).

“Consolidated Working Capital” means, at any date, the excess (which may be negative) of (a) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries at such date, excluding the current portion of deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of Holdings and its Restricted Subsidiaries on such date, but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans, Senior Secured First Lien Indebtedness and obligations under Capital Lease Obligations to the extent otherwise included therein, (iii) the current portion of interest, (iv) the current portion of current and deferred income taxes, (v) accrual of any costs or expenses related to restructuring reserves, (vi) the current portion of pension liabilities and (vii) deferred revenue; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in working capital (A) arising from acquisitions or dispositions by Holdings and its Restricted Subsidiaries shall be measured from the date on which such acquisition or disposition occurred until the first anniversary of such acquisition or disposition with respect to the Person subject to such acquisition or disposition and (B) shall exclude (I) the impact of non-cash adjustments contemplated in the Excess Cash Flow calculation, (II) the impact of adjusting items in the definition of Consolidated Net Income and (III) any changes in current assets or current liabilities as a result of (x) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under hedging agreements or other derivative obligations or (y) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent.

“Contract Consideration” has the meaning assigned to such term in the definition of “Excess Cash Flow”.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Converted Restricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Converted Unrestricted Subsidiary” has the meaning given such term in the definition of “Consolidated EBITDA”.

“Copyrights” has the meaning assigned to such term in the Collateral Agreement.

“Credit Agreement Refinancing Indebtedness” means Indebtedness issued, incurred or otherwise obtained by the Borrower or another Loan Party (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Term Loans (“Refinanced Debt”); provided that such exchanging, extending, renewing, replacing or refinancing Indebtedness (a) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (plus any premium, original issue discount and upfront fees, accrued interest and fees and expenses incurred in connection with such exchange, extension, renewal, repayment, replacement or refinancing and the incurrence of such new Credit Agreement Refinancing Indebtedness) plus additional amounts to the extent otherwise permitted to be incurred under this Agreement pursuant to Section 6.01 (which additional amounts, for the avoidance of doubt, (x) do not constitute Credit Agreement Refinancing Indebtedness and (y) shall constitute a utilization of the relevant basket or exception pursuant to which such additional amount is permitted to be incurred), (b) (i) (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) does not mature earlier than or have a Weighted Average Life to Maturity shorter than the Refinanced Debt and (ii) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Secured Obligations, does not have scheduled amortization or required payments of principal prior to the maturity date of the Refinanced Debt (except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Refinanced Debt) (except for customary payments in respect of asset sales, insurance and condemnation proceeds events, change of control or similar events and “AHYDO catch-up payments” and offers to purchase upon an event of default), (c) shall not be guaranteed by any entity that is not, or that does not substantially concurrently become, a Loan Party, (d) in the case of any secured Indebtedness, is (i) not secured by any assets not securing the Secured Obligations and (ii) subject to the relevant Intercreditor Agreement(s), (e) if the Refinanced Debt was (1) contractually subordinated to the Loan Document Obligations in right of payment, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Refinanced Debt or otherwise reasonably satisfactory to the Administrative Agent and (2) contractually subordinated to the Loan Document Obligations in right of security, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Loan Document Obligations on subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the indebtedness refinanced or otherwise reasonably satisfactory to the Administrative Agent or be unsecured, (f) solely in the case such Credit Agreement Refinancing Indebtedness is *pari passu* in right of payment and security with the Initial Term Loans, such Credit Agreement Refinancing Indebtedness may participate on a pro rata basis (or on less than a pro rata basis if the Borrower and the Lenders thereunder elect lesser payments) (but not greater than pro rata basis) in any voluntary or mandatory prepayments hereunder and (g) has covenants and events of default (excluding, for the avoidance of doubt, pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) that are not materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness

than the covenants and events of default of this Agreement (when taken as a whole) are to the Lenders (unless (x) such covenants or other provisions are applicable only to periods after the maturity date of the Refinanced Debt at the time of such refinancing, (y) the Lenders under the Initial Term Loans also receive the benefit of such more favorable covenants and events of default (including, without limitation, any financial maintenance covenant, and together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial maintenance covenant) (it being understood that, to the extent that any covenant, event of default or guarantee is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Indebtedness or (ii) only applicable after the Latest Maturity Date at the time of such refinancing (provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the requirement of this clause (y) unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination) or (z) such terms and conditions are reasonably satisfactory to the Administrative Agent)). For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes “Credit Agreement Refinancing Indebtedness” and (y) such Credit Agreement Refinancing Indebtedness shall not be subject to any “most favored nation” pricing provisions.

“Cure Amount” has the meaning assigned to such term in the Existing First Lien Credit Agreement.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, examinership or similar debtor relief laws of the United States, or other applicable jurisdictions (domestic or foreign) from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, upon notice, lapse of time or both hereunder would, unless cured or waived, become an Event of Default. “Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 6.05(k) that is designated as Designated Non-Cash Consideration pursuant to

a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

“Discount Prepayment Accepting Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(2).

“Discount Range” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Discount Range Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.11(a)(iii)(C) substantially in the form of Exhibit I.

“Discount Range Prepayment Offer” means the irrevocable written offer by a Term Lender, substantially in the form of Exhibit J, 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 2.11(a)(iii)(C)(1).

“Discount Range Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

“Discounted Prepayment Determination Date” has the meaning assigned to such term in Section 2.11(a)(iii)(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 Offers, five (5) Business Days following the receipt by each relevant Term Lender of notice from the Auction Agent in accordance with Section 2.11(a)(iii)(B), Section 2.11(a)(iii)(C) or Section 2.11(a)(iii)(D), as applicable 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 2.11(a)(iii)(A).

“Dispose” and “Disposition” each have the meaning assigned to such term in Section 6.05.

“Disposed EBITDA” means, with respect to any Sold Entity or Business or Converted Unrestricted Subsidiary for any period through (but not after) the date of such disposition or conversion, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary (determined as if references to Holdings and its Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the

component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries or to such Converted Unrestricted Subsidiary and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or Converted Unrestricted Subsidiary.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests);

(c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof; or

(d) provides for the contractually scheduled payments of dividends in cash;

in each case, on or prior to the date ninety-one (91) days after the Latest Maturity Date; provided, however, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale” or a “change in control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after the Termination Date and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof) or any of its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof) or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person or as a result of such employee’s termination, death or disability.

“Disqualified Lenders” means those Persons (the list of all such Persons, the “Disqualified Lenders List”) that (i) were identified in writing by (or on behalf of) the Sponsor or the Borrower to the Initial Lenders as being “Disqualified Lenders” on or prior to the Effective Date, (ii) are competitors of the Borrower and its Subsidiaries that are identified in writing by the Borrower or the Sponsor to the Administrative Agent from time to time, (iii) are (a) in the case of clause (i), any Affiliates of such Persons that either (x) were identified in writing by the Borrower to the Administrative Agent on or prior to the Effective Date or (y) are readily identifiable as an Affiliate of such Person on the basis of such Affiliate’s name (other than, solely in the case of this

clause (y), if an Event of Default has occurred and is continuing, bona fide debt funds, investment vehicles or fixed income investors that are engaged in making or purchasing commercial loans, bonds or similar extensions of credit in the ordinary course of business) and (b) in the case of clause (ii), any Affiliates (other than bona fide debt funds, investment vehicles or fixed income investors that are engaged in making or purchasing commercial loans, bonds or similar extensions of credit in the ordinary course of business) of such Persons that are either (x) identified in writing by the Borrower from time to time or (y) readily identifiable on the basis of such Affiliate's name or (iv) are Excluded Affiliates; provided that, (I) notwithstanding anything to the contrary in this definition, in no event shall any bona fide debt funds of The Blackstone Group Inc. be Disqualified Lenders and (II) to the extent Persons are identified as Disqualified Lenders in writing by the Borrower or the Sponsor to the Administrative Agent after the Effective Date pursuant to clauses (ii) or (iii)(b), the inclusion of such persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Upon inquiry by any potential assignee or participant as to whether such potential assignee or participant is a Disqualified Lender, the Administrative Agent shall be permitted to disclose to such specific potential assignee (x) whether such specific potential assignee or prospective participant is a Disqualified Lender or (y) the identity of any other Disqualified Lender which the Administrative Agent reasonably believes may be an Affiliate of such specified potential assignee or prospective participant.

"Disqualified Lenders List" has the meaning as set forth in the definition of Disqualified Lenders.

"Dollars" or "\$" refers to lawful money of the United States of America.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Exchange Rate for the purchase of Dollars with such currency.

"Domestic Subsidiary" means any Subsidiary of Holdings organized or incorporated in the United States (or any state thereof or the District of Columbia).

"ECF Percentage" means, with respect to the prepayment required by Section 2.11(d) with respect to any fiscal year of Holdings, if the Senior Secured First Lien Net Leverage Ratio (after giving effect to any voluntary prepayments made pursuant to Section 2.11(a) after the end of such fiscal year and prior to the date of such prepayment) as of the end of such fiscal year is (a) greater than 4.50 to 1.00, 50% of Excess Cash Flow for such fiscal year, (b) greater than 4.00 to 1.00 but less than or equal to 4.50 to 1.00, 25% of Excess Cash Flow for such fiscal year and (c) less than or equal to 4.00 to 1.00, 0% of Excess Cash Flow for such fiscal year.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means May 22, 2020.

“Effective Date Loan Parties” means (i) Holdings, (ii) the Borrower and (iii) each other Subsidiary of Holdings that is a Loan Party as of the Effective Date (if any) and specified on Schedule 1.01(b).

“Effective Yield” means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Required Lenders and the Borrower and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors (the effect of which floors shall be determined in a manner set forth in the proviso below) or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (a) the remaining Weighted Average Life to Maturity of such Indebtedness and (b) the four years following the date of incurrence thereof) payable by the Borrower generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, syndication, commitment, prepayment, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with all relevant syndicate Lenders and, if applicable, consent fees for an amendment paid generally to consenting Lenders; provided that with respect to any Indebtedness that includes a “LIBOR floor” or “Base Rate floor”, (i) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the interest rate margin for such Indebtedness for the purpose of calculating the Effective Yield and (ii) to the extent that the LIBO Rate or Alternate Base Rate (without giving effect to any floors in such definitions), as applicable, on the date that the Effective Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the Effective Yield.

“Electing Guarantor” means any Excluded Subsidiary that, at the option and in the sole discretion of the Borrower, has been designated a Subsidiary Loan Party; *provided*, for the avoidance of doubt, (x) unless otherwise expressly agreed by the Borrower, no Subsidiary that is an Excluded Subsidiary shall be a Loan Guarantor until and unless it ceases to be an Excluded Subsidiary, and (y) the Borrower may cause any Restricted Subsidiary that is not a Loan Guarantor to guarantee the Secured Obligations by causing such Restricted Subsidiary to become a Loan Guarantor under a Guarantee and a grantor under the applicable Security Documents in accordance with Section 5.13, and any such Restricted Subsidiary shall be a Loan Guarantor hereunder and under the other Loan Documents for all purposes; *provided*, that no Foreign Subsidiary shall become a Loan Guarantor unless (i) reasonably approved by the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) based upon (1) the amount and



enforceability of the Guarantee that may be entered into by such Foreign Subsidiary based on such Foreign Subsidiaries jurisdiction of organization and (2) the Liens on the Collateral (and enforceability thereof) that may be granted with respect to assets (or various classes of assets) located in the jurisdiction of organization of such Foreign Subsidiary; and (ii) such security documents and other actions (including, without limitation, security documentation, delivery of legal opinions and other actions under the law of the jurisdiction of organization of the Electing Guarantor) reasonably requested by the Administrative Agent within such time periods as the Administrative Agent may agree in its reasonable discretion) shall have been delivered and/or taken to create and perfect the liens on the Collateral of such Foreign Subsidiary in its jurisdiction of incorporation.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than Holdings, the Borrower or any of their respective Affiliates), other than, in each case, (i) a natural person or (ii) a Disqualified Lender.

“Environmental Laws” means all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, common law, decrees and other applicable Requirements of Law and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to (1) pollution, (2) the protection of the environment, (3) preservation or reclamation of natural resources, (4) the use, handling, transportation, treatment, storage, presence, Release or threatened Release of, or exposure to, any Hazardous Material, or (5) to the extent relating to exposure to Hazardous Materials, to health or safety matters.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities) directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the presence, generation, use, handling, transportation, storage, or treatment 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 agreement to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person (whether evidenced by share certificates (or similar) or not).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, in each case whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA (other than premiums due and not delinquent under Section 4007 of ERISA) with respect to the termination of any Plan or by application of Section 4069 of ERISA with respect to any terminated plan; (f) the receipt by a Loan Party or an ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or an intention to terminate or to appoint a trustee to administer any plan or plans in respect of which such Loan Party or ERISA Affiliate would be deemed to be an employer under Section 4069 of ERISA; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (h) the receipt by a Loan Party of any notice from any Multiemployer Plan, concerning the imposition of Withdrawal Liability, or the failure of a Loan Party or any ERISA Affiliate to pay when due, after the expiration of any applicable grace period, any installment payment with respect to any Withdrawal Liability; or (i) the withdrawal of a Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity 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.

“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.

“Eurodollar” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

(i) Consolidated Net Income for such period,

- (ii) an amount equal to the amount of all Non-Cash Charges to the extent deducted in arriving at such Consolidated Net Income,
  - (iii) decreases in Consolidated Working Capital, and
  - (iv) an amount equal to the aggregate net non-cash loss on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; less
- (b) the sum, without duplication, of:
- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (including any amounts included in Consolidated Net Income of proceeds received or due from business interruption insurance or reimbursement of expenses and charges pursuant to indemnification and other reimbursement provisions in connection with any acquisition or other Investment or any disposition of any asset permitted under this Agreement to the extent such amounts are due but not received during such period) and cash charges, expenditures and losses added to (or excluded from the determination of) Consolidated Net Income pursuant to clauses (a) through (i) of the definition of “Consolidated Net Income” (other than cash charges in respect of Transaction Costs paid on or about the Effective Date to the extent financed with the proceeds of long-term Indebtedness incurred on the Effective Date),
  - (ii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of capital expenditures and Intellectual Property development expenditures made in cash or accrued during such period, except to the extent that such expenditures were financed with the proceeds of long-term Indebtedness of Holdings and its Restricted Subsidiaries,
  - (iii) the aggregate amount of all principal payments of Indebtedness (including (1) the principal component of payments in respect of Capitalized Leases, (2) scheduled repayments of other Senior Secured First Lien Indebtedness and (3) the amount of any mandatory prepayment of Loans to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding all other prepayments of Term Loans or other Senior Secured First Lien Indebtedness and all prepayments of revolving loans made during such period, other than (A) in respect of any revolving credit facility except to the extent there is an equivalent permanent reduction in commitments thereunder and (B) to the extent financed with the proceeds of other long-term Indebtedness of Holdings or its Restricted Subsidiaries),
  - (iv) an amount equal to the aggregate net non-cash gain on dispositions by Holdings and its Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period,

(vi) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of long-term liabilities of Holdings and its Restricted Subsidiaries other than Indebtedness to the extent that such payments were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(vii) without duplication of amounts deducted pursuant to clause (xii) below in prior fiscal years, the amount of Investments (other than Investments in Permitted Investments) and acquisitions made in accordance with Section 6.04 (other than Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (j), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)) to the extent that such Investments and acquisitions were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries,

(viii) the amount of dividends and other Restricted Payments (including the amount of Tax Distributions made by the Borrower during such period or payable after such period in respect of income generated during such period) pursuant to Section 6.07(a) (other than pursuant to Section 6.07(a)(i), (a)(ii), (a)(viii), (a)(xiii), (a)(xv) or (a)(xvii)), in each case to the extent not deducted in arriving at Consolidated Net Income) and paid in cash during such period or payable in respect of such period, to the extent such dividends and Restricted Payments were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries; provided that any amount deducted for such period in respect of amounts payable during a subsequent period shall not be deducted in any subsequent period and, to the extent not actually paid during such subsequent period, shall be added to Excess Cash Flow for such subsequent period,

(ix) the aggregate amount of payments and expenditures actually made by Holdings and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees and restructuring charges) to the extent that such payments and expenditures are not expensed during such period,

(x) cash payments by Holdings and its Restricted Subsidiaries during such period in respect of Non-Cash Charges included in the calculation of Consolidated Net Income in any prior period,

(xi) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by Holdings and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness, in each case to the extent not deducted in determining Consolidated Net Income,

(xii) at the option of the Borrower, and without duplication of amounts deducted from Excess Cash Flow in prior periods, (1) the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries

pursuant to binding contracts, commitments, letters of intent or purchase orders (the “Contract Consideration”), in each case, entered into prior to or during such period, or at the option of the Borrower, after the applicable period and prior to the applicable Excess Cash Flow due date, and (2) to the extent set forth in a certificate of a Financial Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Test Period is required to be delivered pursuant to Section 5.01(d) (which shall be satisfied if such certification is included in the Compliance Certificate), the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash expenditures by the Borrower or any of the Restricted Subsidiaries (the “Planned Expenditures”), in the case of each of clauses (1) and (2), relating to Permitted Acquisitions, other Investments (other than Investments in Permitted Investments pursuant to Section 6.04(a) and Investments pursuant to Section 6.04(a), (c), (e)(ii), (g), (k), (m)(ii) and (iii), (o), (p), (q) or (hh)), restructuring charges, or capital expenditures (including Capitalized Software Expenditures or other purchases or development of Intellectual Property) to be consummated or made during a subsequent Test Period (and in the case of Planned Expenditures, the immediately succeeding fiscal year); provided that, to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions, Investments, restructuring charges or capital expenditures during such Test Period 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 Test Period, and

(xiii) the amount of taxes (including penalties and interest) paid in cash and/or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and

(xiv) the aggregate amount of Transaction Costs incurred during such period to the extent not deducted in the calculation of Consolidated Net Income and were not financed with the proceeds of long-term Indebtedness of Holdings or its Restricted Subsidiaries.

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

“Exchange Rate” has the meaning assigned to such term in Section 1.07.

“Excluded Affiliates” means any Affiliate of any Lender that is engaged as a principal primarily in private equity or venture capital transactions, other than a limited number of senior employees who are required, in accordance with industry regulations or such Lender’s internal policies and procedures, to act in a supervisory capacity and such Lender’s internal legal compliance, risk management, credit or investment committee members.

“Excluded Assets” means (a) any fee-owned real property that is not Material Real Property and all leasehold (including ground lease) interests in real property (including

requirements to deliver landlord lien waivers, estoppels and collateral access letters), (b) motor vehicles and other assets subject to certificates of title or ownership (to the extent a security interest therein cannot be perfected by the filing of a UCC-1 financing statement), (c) letter of credit rights (except to the extent constituting supporting obligations (as defined under the UCC) in which a security interest can be perfected with the filing of a UCC-1 financing statement) with a value of less than \$2,500,000, (d) commercial tort claims with a value (as reasonably estimated by the Borrower) of less than \$2,500,000, (e) Excluded Equity Interests, (f) any lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (or any asset subject to such agreement or arrangement) with any Person if, to the extent and for so long as, the grant of a Lien thereon to secure the Secured Obligations (in each case, in existence on the Effective Date or upon the acquisition of the relevant Subsidiary party thereto or asset (so long as not entered into in contemplation thereof)) would require the consent of a third party (unless such consent has been received) (it being understood that no Loan Party shall be under any affirmative obligation to obtain such consent) or violate or invalidate, constitute a breach of or a default under, or create a right of termination in favor of any party (other than any Loan Party) to, such lease, contract, license, sublicense, other agreement or document, government approval, charter, authorization or franchise (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law), (g) any asset subject to a Lien of the type permitted by Section 6.02(iv) (whether or not incurred pursuant to such Section) or a Lien permitted by Section 6.02(xi), in the case of Liens permitted by Section 6.02(xi) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations constitutes a breach of or a default under, or creates a right of termination in favor of any party (other than any Loan Party) to, any agreement pursuant to which such Lien has been created (but after giving effect to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) (provided that any such provision is not included by the Borrower or any Restricted Subsidiary principally for the purpose of taking advantage of the exclusion in this clause (g)), (h) (1) any intent-to-use Trademark applications filed in the United States Patent and Trademark Office, prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, but only to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application or any registration that may issue therefrom under applicable federal law and (2) any Intellectual Property registered, issued or applied for in, or arising under the laws of, any jurisdiction outside of the United States, (i) any asset (including Equity Interests) if, to the extent and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law, rule or regulation, contractual obligation existing on the Effective Date (or, if later, the date the Person owning the asset becomes a Restricted Subsidiary, so long as the applicable contractual obligation was not entered into in contemplation of such Person becoming a Restricted Subsidiary) or agreements with any Governmental Authority (other than to the extent that any such prohibition would be rendered ineffective pursuant to the applicable anti-non-assignment provisions of the Uniform Commercial Code, or any other applicable Requirements of Law) or which would require consent, approval, license or authorization from any Governmental Authority or regulatory authority (it being understood that there shall be no requirement to obtain the consent of any governmental authority or third party, including, without limitation, no requirement to comply with the Federal Assignment of Claims Act or any similar statute), unless such consent, approval, license or authorization has been received, (j) margin stock (within the meaning of Regulation U

of the Board of Governors, as in effect from time to time), (k) Securitization Assets, (l) [reserved], (m) other than with respect to (i) the pledge of Equity Interests of a Loan Party and (ii) the pledge of assets by an Electing Guarantor which is a Foreign Subsidiary, any assets located or titled outside the United States, (n) assets acquired in connection with a Permitted Acquisition or other permitted Investment subject to liens permitted under this Agreement and which are (and for so long as) subject to contractual arrangements (not incurred in contemplation thereof) prohibiting a Lien securing the Secured Obligations (but only so long as such Lien is in existence), (o) any assets to the extent that the granting of a Lien thereon to secure the Secured Obligations could reasonably be expected to result in adverse (other than de minimis) tax or regulatory consequences, as reasonably determined by the Borrower; and (p) any assets with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed to in writing), the cost or burden of pledging such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom).

“Excluded Equity Interests” means Equity Interests in any (a) Unrestricted Subsidiary, (b) Immaterial Subsidiary (to the extent not a Guarantor), (c) Subsidiary that is a CFC, any Subsidiary that is a direct or indirect Subsidiary of a CFC and any Subsidiary that is a FSHCO (except that up to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of any Subsidiary that is a CFC, a direct or indirect Subsidiary of a CFC or a FSHCO shall not be Excluded Equity Interests), (d) joint ventures and Non-Wholly Owned Subsidiaries which cannot be pledged without the consent of third parties (it being understood that there shall be no obligation to obtain such consent) (after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law) or (e) not-for-profit Subsidiary, captive insurance company or special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary.

“Excluded Information” has the meaning assigned to such term in Section 2.11(a)(iii)(A).

“Excluded Subsidiary” means (a) any Subsidiary that is not a direct or indirect Wholly Owned Subsidiary of Holdings, (b) each Subsidiary listed on Schedule 1.01(a), (c) any Subsidiary that is prohibited by applicable law, rule or regulation or contractual obligation existing on the Effective Date or, if later, the date such Subsidiary first becomes a Restricted Subsidiary (but, in the case of a contractual obligation, to the extent not created in contemplation of such Subsidiary becoming a Restricted Subsidiary), from guaranteeing the Secured Obligations or which would require (and, only for so long as) any governmental or regulatory consent, or third party consent, approval, license or authorization to do so, unless such consent, approval, license or authorization has been obtained, provided that such Subsidiary shall have no affirmative obligation to obtain such consent, (d) any Immaterial Subsidiary, (e) any Subsidiary to the extent the provision of a Guarantee by such Subsidiary could reasonably be expected to result in adverse (other than de minimis) tax consequences as reasonably determined by the Borrower, (f) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower (as agreed in writing), the cost or burden of providing the Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (g) any Subsidiary that is (or, if it were a Loan Party, would be) an “investment company” under the Investment Company Act of 1940, as amended, (h) any not-for profit Subsidiaries, captive insurance companies or other special

purpose subsidiaries, (i) any Foreign Subsidiary other than a Foreign Subsidiary that becomes a Subsidiary Loan Party pursuant to Section 5.13, (j) any direct or indirect Subsidiary of a CFC, (k) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary, (l) any Subsidiary that is a FSHCO, (m) each Unrestricted Subsidiary, (n) any Subsidiary for which the providing of a Guarantee could reasonably be expected to result in any violation or breach of, or conflict with, fiduciary duties of such Subsidiary's officers, directors, (or other governing body) or managers and (o) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition (or other Investment not prohibited by this Agreement) financed with Indebtedness permitted under Section 6.01 hereof as assumed Indebtedness and any Restricted Subsidiary thereof that Guarantees such Indebtedness, in each case to the extent such Indebtedness prohibits such Subsidiary from becoming a Loan Guarantor; provided that any Immaterial Subsidiary that is a signatory to any Collateral Agreement or the Guarantee Agreement shall be deemed not to be an Excluded Subsidiary for purposes of this Agreement and the other Loan Documents unless released in accordance herewith.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) such recipient's net income (however denominated) and franchise Taxes, in each case (i) imposed on it by a jurisdiction as a result of such recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, or (ii) that are Other Connection Taxes, (b) any branch profits tax imposed under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (a)(i) above, (c) any Tax imposed pursuant to FATCA, (d) any Tax that is attributable to a Lender's failure to comply with Section 2.17(f) and (e) any U.S. federal withholding Taxes imposed on amounts payable to a Lender pursuant to a Requirement of Law in effect at the time such Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.19 hereto) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive payment of additional amounts with respect to such withholding Taxes under Section 2.17(a).

"Existing First Lien Administrative Agent" means Barclays Bank PLC, as administrative agent and collateral agent under the Existing First Lien Credit Agreement (or any permitted successor or assign thereof).

"Existing First Lien Credit Agreement" means that certain First Lien Credit Agreement, dated as of June 30, 2017 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time), among Hoya Midco, LLC, a Delaware limited liability company, as the borrower, the Lenders (as defined therein), the Existing First Lien Administrative Agent and the other parties from time to time party thereto.

"Existing First Lien Loan Documents" means the Existing First Lien Credit Agreement and all security agreements, guarantees, pledge agreements, notes and other agreements or instruments executed in connection therewith, including all "Loan Documents" (as defined in the Existing First Lien Credit Agreement).



“Existing First Lien Loans” means the “Term Loans” as defined in the Existing First Lien Credit Agreement.

“Existing First Lien Permitted Incremental Equivalent Debt” means (1) “Incremental Equivalent Debt” (as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date) and (2) any Indebtedness that would be permitted to be incurred pursuant to Sections 6.01(a) (xv) or (a)(xvi) of the Existing First Lien Credit Agreement (as in effect on the Effective Date).

“Existing Revolving Facility Refinancing” has the meaning specified in the definition of “Transaction.”

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable thereto and not materially more onerous to comply with), any current or future Treasury regulations thereunder or other official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version described above) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“FCPA” has the meaning specified in Section 3.16(a).

“Federal Funds Effective Rate” means, for any day, the per annum rate equal to the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time), as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, (a) such rate 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 Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent; provided that the Federal Funds Effective Rate, if negative, shall be deemed to be 0.00%.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, corporate controller or other officer with similar functions and responsibilities as the foregoing of Holdings or the Borrower, as applicable.

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means a Lender that is not a United States Person (as defined in Section 7701(a)(30) of the Code).

“Foreign Subsidiary” means any Restricted Subsidiary of Holdings other than a Domestic Subsidiary.

“FSHCO” means any Subsidiary of Holdings substantially all of the assets of which are capital stock of one or more CFCs and, if applicable, debt of any such CFC.

“Funded Debt” means all Indebtedness of Holdings and its 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, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of any subsidiary at “fair value”, as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of Capital Lease Obligations.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether federal, state, provincial, territorial, 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 in any jurisdiction (including any supra national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness) or product warranty obligations. 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 in good faith by a Financial Officer. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee Agreement” means the Guarantee Agreement among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit B.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, or contaminants of any nature and in any form regulated pursuant to any Environmental Law.

“Historical Audited Financial Statements” means the audited consolidated balance sheet and the related consolidated statements of income and retained earnings and statement of cash flows of the Company and its subsidiaries for the fiscal years ending December 31, 2017, December 31, 2018 and December 31, 2019.

“Holdings” has the meaning given to such term in the introductory paragraph hereto; provided that upon and after an IPO, if the IPO Entity is Holdings or any Person of which Holdings is a wholly-owned Subsidiary, “Holdings” shall mean the IPO Entity.

“Holdings Parent” means any direct or indirect parent company of Holdings.

“Holdings Parent Specified Expenses” shall mean any charge, tax or expense incurred or accrued by any Holdings Parent during any period to the extent that Holdings has made a Restricted Payment (or has made any Investment in lieu thereof pursuant to Section 6.04(l)) to any Holdings Parent in respect thereof pursuant to Section 6.07(a)(vii), but in each case limited to the amount of such Restricted Payment or Investment.

“Identified Participating Lenders” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(3).

“Identified Qualifying Lenders” has the meaning specified in Section 2.11(a)(iii)(D)(3).

“Immaterial Subsidiary” means any Subsidiary other than a Material Subsidiary.

“Impacted Loans” has the meaning specified in Section 2.14(b).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) trade accounts payable in the ordinary course of business, (y) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after being due and payable and (z) expenses accrued in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; provided that the term “Indebtedness” shall not include (i) deferred or prepaid revenue, deferred tax liabilities, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA and other accrued obligations (including transfer pricing), and customary obligations under employment agreements and deferred compensation, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty, indemnity or other unperformed obligations of the seller, or other contingent post-closing purchase price adjustments, non-compete or consulting obligations, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Person that is a Holdings Parent appearing on the balance sheet of Holdings or the Borrower, or solely by reason of push down accounting under GAAP, or (v) for the avoidance of doubt, any Qualified Equity Interests issued by Holdings or the Borrower. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary

course of business. The amount of any Indebtedness issued at a discount to the initial principal amount thereof shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

“Indemnified Taxes” means (a) 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 and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnatee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 9.12(a).

“Initial Lenders” means GSO Credit Alpha Fund II-C AIV-2 LP and GSO CSF III AIV-2 LP.

“Initial Term Loans” means the Loans made pursuant to Section 2.01 (including, for the avoidance of doubt, the amount of interest that has been added to the outstanding principal amount of the Initial Term Loans pursuant to any PIK Election).

“Intellectual Property” has the meaning assigned to such term in the Collateral Agreement.

“Intellectual Property Security Agreements” means short-form security agreements, suitable for filing with the United States Patent and Trademark Office or the United States Copyright Office (as applicable), with respect to any Trademarks, Patents and Copyrights that are registered, issued or applied-for in the United States and that constitute Collateral.

“Intercompany License Agreement” means any cost sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, intellectual property rights transfer agreement or any related agreements, in each case where all the parties to such agreement are one or more of Holdings or a Restricted Subsidiary.

“Intercreditor Agreement” means any Pari Passu Intercreditor Agreement or any Junior Intercreditor Agreement, as applicable.

“Interest Election Request” means a request by the Borrower to convert or continue a Term Borrowing in accordance with Section 2.07, substantially in the form of Exhibit C-2.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date such Borrowing is disbursed or converted to or continued as a Eurodollar

Borrowing and ending on the date that is one or three months thereafter as selected by the Borrower in its Borrowing Request (or, if agreed by each Lender participating therein, any other period as the Borrower may elect); provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month at the end of such Interest Period and (c) no Interest Period shall extend beyond the Term Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means in relation to the “LIBO Rate” for any Loan, the rate which results from interpolating on a linear basis between: (i) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period and (ii) the rate displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period, each as of approximately 11:00 A.M., London, England time, two (2) Business Days prior to the commencement of such Interest Period; provided that the Interpolated Rate, if negative, shall be deemed to be 0.00%.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of Holdings and its Restricted Subsidiaries (i) intercompany advances arising from their cash management, tax, and accounting operations and (ii) intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; provided that, in the event that any Investment is made by Holdings or any Restricted Subsidiary in any Person through one or more other substantially concurrent interim transfers of any amount through any other Restricted Subsidiaries, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 6.04. The amount, as of any date of determination, of (a) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (b) any Investment in the form of a Guarantee shall be 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 in good faith by a Financial Officer, (c) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by a Financial Officer) of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (d) any Investment (other than any Investment referred to in clause (a), (b) or (c) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (i) the cost of all additions thereto and minus (ii) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (ii) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto and without duplication of amounts increasing the Available Amount or the Available Equity Amount), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; provided that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“Investor” means investors (including Management Investors) who, as of the Effective Date, hold Equity Interests in the Company (or any direct or indirect parent thereof) (including, for the avoidance of doubt, the Sponsor).

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time upon and after an IPO, Holdings or a Holdings Parent, as the case may be, the Equity Interests of which were issued or otherwise sold pursuant to the IPO; provided that, immediately following the IPO, the Borrower is a Wholly Owned Subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.

“Judgment Currency” has the meaning assigned to such term in Section 9.17.

“Junior Financing” means (a) any Indebtedness (other than (i) any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary or (ii)

any Indebtedness in an aggregate principal amount not exceeding \$30,000,000) that is unsecured, that is subordinated in right of payment to the Loan Document Obligations or that is secured by the Collateral on a junior lien basis relative to the liens granted pursuant to the Loan Documents securing the Initial Term Loans and (b) any Permitted Refinancing in respect of the foregoing.

“Junior Intercreditor Agreement” means the Junior Intercreditor Agreement substantially in the form of Exhibit E-2 among, *inter alia*, the Administrative Agent, the Collateral Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a junior basis, with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“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 (for the avoidance of doubt, without giving effect to any “springing maturity date” unless such “springing maturity date” is actually triggered in accordance with its terms), including the latest maturity or expiration date of any Other Term Loan, or any Other Term Commitment, in each case as extended in accordance with this Agreement from time to time.

“LCT Election” has the meaning assigned to such term in Section 1.06.

“LCT Test Date” has the meaning assigned to such term in Section 1.06.

“Legal Reservations” means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court (regardless of whether considered in a proceeding in equity or at law), the limitation of enforcement by Debtor Relief Laws and laws relating to judicial management, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and similar principles or limitations under the laws of any applicable jurisdiction;

(b) the time barring of claims under applicable limitation laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defenses of set-off or counterclaim and similar principles or limitations under the laws of any applicable jurisdiction;

(c) any general principles, reservations or qualifications, in each case as to matters of law as set out in any legal opinion delivered to the Administrative Agent in connection with any provision of any Loan Document;

(d) the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

(e) the principle that in certain circumstances security granted by way of fixed charge may be characterized as a floating charge or that security purported to be constituted by way of an assignment may be recharacterized as a charge;



(f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

(g) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition against transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach entitling the contracting party to terminate or take any other action in relation to such contract or agreement;

(h) [reserved]; and

(i) similar principles, rights and defenses under the laws of any relevant jurisdiction.

“Lenders” means the Persons listed on Schedule 2.01 as a Lender and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, a Loan Modification Agreement or a Refinancing Amendment, in each case, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate” means, for any Interest Period with respect to a Eurodollar Borrowing, the rate per annum equal to (i) the London interbank offered rate administered by ICE Benchmark Administration Limited (or such other commercially available source providing quotations of that rate as may be designated by the Administrative Agent from time to time, including any Person that takes over administration of the rate) displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters) at approximately 11:00 a.m., London, England time, two (2) London Banking Days prior to the commencement of such Interest Period, for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the Interpolated Rate; provided that the LIBO Rate, if negative, shall be deemed to be 0.00%.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, assignment by way of security, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Limited Condition Transaction” means (1) any acquisition by the Borrower or one or more Restricted Subsidiaries of (or investment in) any assets, business, division or person/entity permitted pursuant to this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any irrevocable debt repurchase or prepayment, or (3) Restricted Payment by the Borrower or any Restricted Subsidiary permitted pursuant to this Agreement (solely to the extent such Restricted Payment shall be made on or prior to the date that is sixty (60) days after such Restricted Payment is declared); provided that the Consolidated Net Income (and any other financial defined term derived therefrom) shall not include any Consolidated Net Income of or attributable to the target company or assets associated with any

such Limited Condition Transaction for usages other than in connection with the applicable transaction pertaining to such Limited Condition Transaction unless and until the closing of such Limited Condition Transaction shall have actually occurred.

“Loan Document Obligations” means the due and punctual payment by the Borrower of (i) the principal of the Loans (including, for the avoidance of doubt, the amount of any accrued interest that is capitalized pursuant to a PIK Election), and all accrued and unpaid interest and premium thereon at the applicable rate or rates provided in this Agreement (including interest and premium accruing during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expenses, reimbursement obligations and indemnification obligations and obligations to provide cash collateral, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“Loan Documents” means this Agreement, any Refinancing Amendment, any Loan Modification Agreement, the Guarantee Agreement, the Collateral Agreement, the other Security Documents, the Closing Date Intercreditor Agreement and any other Intercreditor Agreement (if applicable), except for purposes of Section 9.02, any Note delivered pursuant to Section 2.09(f), the Agent Fee Letter, and any other document entered into or delivered by a Loan Party in connection with the foregoing and designated by the Borrower as a Loan Document therein for purposes of this Agreement.

“Loan Guarantors” means Holdings and the Subsidiary Loan Parties, in each case, to the extent such entity provides a guaranty of the Secured Obligations.

“Loan Modification Agreement” means a Loan Modification Agreement, among the Borrower, and one or more Accepting Lenders, and acknowledged by the Administrative Agent, effecting one or more Permitted Amendments and such other amendments hereto and to the other Loan Documents as are contemplated by Section 2.24.

“Loan Modification Offer” has the meaning specified in Section 2.24(a).

“Loan Parties” means the Loan Guarantors and the Borrower.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Make-Whole Amount” means, at any applicable date, as calculated by the Borrower, the greater of (i) 6.00% of the principal amount of the Initial Term Loans prepaid or

modified and (ii) the excess, if any, of: (x) the present value on the date that the applicable prepayment or repricing is consummated of (1) the prepayment price of the Initial Term Loans paid or repriced on the second anniversary of the Effective Date plus (2) all required remaining scheduled interest payments due on the Initial Term Loans prepaid through the second anniversary of the Effective Date, assuming (x) that the rate of interest will be equal to the rate of cash interest applicable to Initial Term Loans maintained as Eurodollar Loans having an Interest Period of three months as in effect on the date (for the avoidance of doubt, applying the 1.00% Adjusted LIBO Rate floor, if applicable) that the applicable prepayment or repricing is consummated and (y) that interest on such Initial Term Loans will be paid entirely in cash (but giving effect to any PIK Election already made in computation of such principal amount, *i.e.*, by increasing the principal amount of such Initial Term Loans by the amount of interest that will be added to such principal amount in the applicable Interest Period prior to the second anniversary of the Effective Date pursuant to any PIK Election that has already been made), other than accrued but unpaid interest to such consummation date, in the case of each of clauses (1) and (2) above, computed using a discount rate equal to the Treasury Rate plus 50 basis points per annum discounted on a semi-annual bond equivalent basis, over (y) the principal amount of the prepaid or modified Initial Term Loans on such consummation date.

“Management Investors” means the members of the Board of Directors, officers, employees and shareholders of the Company, the Borrower and/or their respective Subsidiaries who, as of the Effective Date, are (directly or indirectly through one or more investment vehicles) investors in Holdings or any Holdings Parent and, in each case, each of their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees.

“Mandatory Prepayment Offer Notice” has the meaning assigned to such term in Section 2.11(b).

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement”.

“Material Adverse Effect” means any event, change or condition that, individually or in the aggregate, has had or could reasonably be expected to have (a) a material adverse effect on the business, assets, financial condition or results of operations of the Loan Parties and their Subsidiaries, taken as a whole, (b) a material adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, or (c) a material adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders under the Loan Documents; *provided*, that, for purposes of Sections 3.04(c) and 4.01(m), neither the effects of the novel coronavirus (COVID-19) pandemic nor any matters arising therefrom that were disclosed to the Initial Lenders prior to the Effective Date shall constitute, result or otherwise have (or reasonably be expected to constitute, result or otherwise have) a Material Adverse Effect.

“Material Indebtedness” means Indebtedness for borrowed money (other than the Loan Document Obligations), Capital Lease Obligations, unreimbursed obligations for letter of credit drawings and financial guarantees (other than ordinary course of business contingent reimbursement obligations) or obligations in respect of one or more Swap Agreements, of any one or more of Holdings and its Restricted Subsidiaries in an aggregate principal amount exceeding

\$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Non-Public Information” means (a) if Holdings is a public reporting company, material non-public information with respect to Holdings or its Subsidiaries, or the respective securities of any of the foregoing, and (b) if Holdings is not a public reporting company, information that is (i) of a type that would not be publicly available if Holdings were a public reporting company and (ii) material with respect to Holdings or its Subsidiaries or any of their respective securities for purposes of United States Federal and state securities laws.

“Material Real Property.” means any real property (including fixtures) located in the United States of America and owned in fee by any Loan Party with a fair market value, as reasonably determined by the Borrower in good faith, greater than or equal to \$5,000,000.

“Material Subsidiary.” means each Wholly Owned Restricted Subsidiary that, as of the last day of the fiscal quarter of Holdings most recently ended, had net revenues or total assets for such quarter in excess of 5.0% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter; provided that in the event that the Immaterial Subsidiaries, taken together, had as of the last day of the fiscal quarter of Holdings most recently ended, net revenues or total assets in excess of 7.5% of the consolidated net revenues or consolidated total assets of Holdings and its Restricted Subsidiaries for such quarter, as applicable, the Borrower shall designate in writing one or more Immaterial Subsidiaries to be a Material Subsidiary within ten (10) Business Days of the delivery of financial statements in accordance with Section 5.01(a) or (b) as may be necessary such that the foregoing 7.5% limit shall not be exceeded, and any such Subsidiary shall thereafter be deemed to be an Material Subsidiary hereunder and shall comply with the requirements set forth in Section 5.11 within the time periods set forth therein; provided, further, that the Borrower may re-designate Material Subsidiaries as Immaterial Subsidiaries so long as the Borrower is in compliance with the foregoing.

“Maximum Rate” has the meaning assigned to such term in Section 9.16.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, charge, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time. Each Mortgage shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

“Mortgaged Property” means each parcel of Material Real Property with respect to which a Mortgage will (or is required to be) be granted pursuant to the Collateral and Guarantee Requirement, Section 5.11, Section 5.12 or Section 5.14 (if any).

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and any Restricted Subsidiaries in connection with such event (including attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans, the Existing First Lien Loans, or other Indebtedness secured by a Lien that ranks pari passu with or subordinated to the Liens securing the Initial Term Loans and otherwise subject to the terms of Section 2.11(e)) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, the Borrower or the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by the Borrower or any Restricted Subsidiary and (iii) the amount of all taxes (including Tax Distributions) paid (or reasonably estimated to be payable), the amount of dividends and other restricted payments that Holdings, the Borrower and/or its Restricted Subsidiaries may make pursuant to Section 6.07(a)(vii)(A) or (B) as a result of such event, and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

“New Project” shall mean (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by Holdings or its Subsidiaries which in fact commences operations and (b) each creation (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

“Non-Accepting Lender” has the meaning assigned to such term in Section 2.24(c).

“Non-Cash Charges” means (a) any impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt

and equity securities pursuant to GAAP, (b) all losses from Investments recorded using the equity method, (c) all Non-Cash Compensation Expenses, (d) depreciation and amortization including amortization or impairment of intangibles (including goodwill) (including, without limitation, as they relate to amortization of deferred financing fees or costs, Capitalized Software Expenditures and amortization of unrecognized prior service costs and actuarial gains and losses related to pension and other post-employment benefits) and (f) other non-cash charges, expenses and losses, including, without limitation, any non-cash translation loss and non-cash expense relating to the vesting of warrants, non-cash asset write-offs or write-downs, non-cash write offs of debt discounts and debt incurrences, non-cash costs and commissions, non-cash discounts and other non-cash fees and charges with respect to Indebtedness, interest rate protection and other hedging agreements, provided, in each case, that if any non-cash charges added back pursuant to clause (a)(iii) of the definition of Consolidated EBITDA represent an accrual or reserve for potential cash items in any future period to the extent the Borrower elects to include such non-cash charges, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent.

“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Non-Refinancing Lender” has the meaning assigned to such term in Section 2.21(b).

“Non-Wholly Owned Subsidiary” of any Person means any subsidiary of such Person other than a Wholly Owned Subsidiary.

“Not Otherwise Applied” means, with reference to the Available Amount or the Available Equity Amount, as applicable, that such amount was not previously applied pursuant to Sections 6.01(a)(xvii), 6.04(m), 6.07(a)(viii) and 6.07(b)(iv).

“Note” means a promissory note of the Borrower, in substantially the form of Exhibit O, payable to a Lender in a principal amount equal to the principal amount of Term Loans of such Lender.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Offered Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Offered Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational, constitutional or governing documents of such Person (including any certificates of incorporation and/or certificates of incorporation on a change of name).

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

“Other Taxes” means any and all present or future recording, filing, stamp, court, registration duties, documentary, intangible, excise, transfer, sales, property or similar Taxes, charges or levies arising from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than assignment pursuant to Section 2.19).

“Other Term Commitments” means one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment or a Loan Modification Agreement.

“Other Term Loans” means one or more Classes of Term Loans that result from a Refinancing Amendment or a Loan Modification Agreement.

“Pari Passu Intercreditor Agreement” means (a) the Closing Date Intercreditor Agreement and (b) any Pari Passu Intercreditor Agreement substantially in the form of Exhibit E-1, among, *inter alia*, the Administrative Agent, the Collateral Agent and one or more Senior Representatives for holders of Indebtedness permitted by this Agreement to be secured by the Collateral on a pari passu basis (but without regard to the control of remedies), with such modifications thereto as the Administrative Agent and the Borrower may reasonably agree.

“Participant” has the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 9.04(c)(ii).

“Participating Lender” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(2).

“Patents” has the meaning assigned to such term in the Collateral Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means the purchase or other acquisition, by merger, amalgamation, consolidation or otherwise, by the Borrower or any Subsidiary of any Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person; provided that (a) in the case of any purchase or other acquisition of Equity Interests of another Person, (i) such Person,

upon the consummation of such purchase or acquisition, will be a Subsidiary (including as a result of a merger, amalgamation or consolidation between any Subsidiary and such Person), or (ii) such Person is merged or amalgamated into or consolidated with a Subsidiary and such Subsidiary is the surviving entity of such merger, amalgamation or consolidation, (b) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 5.16, (c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to satisfy the requirements set forth in clauses (a), (b), (c) and (d) of the definition of the term "Collateral and Guarantee Requirement" to the extent applicable shall have been taken (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made that are reasonably satisfactory to the Administrative Agent) (unless such newly created or acquired Subsidiary is designated as an Unrestricted Subsidiary pursuant to Section 5.13 or is otherwise an Excluded Subsidiary), provided, however, that to the extent such newly created or acquired Subsidiary will not become a Loan Party (or in the case of an acquisition of assets, the acquired assets are not owned by a Loan Party), the amount of any Investment in such newly created or acquired Subsidiary (or assets, as applicable) does not exceed the greater of (A) \$25,000,000 and (B) 25% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment, (d) Consolidated EBITDA of such Person (after giving effect to any adjustments and add-backs in accordance with the definition of "Consolidated EBITDA", "Consolidated Net Income", and "Pro Forma Adjustment") shall be greater than \$0 for the most recently ended twelve-month period for which financials are available immediately preceding the date on which the relevant binding agreement has been executed and delivered, (e) after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing (or, in the case of an acquisition which is a Limited Condition Transaction, no Event of Default shall have occurred and be continuing at the time of execution of a definitive agreement in respect thereof), (f) such acquisition shall not be hostile and (g) if applicable, such acquisition shall have been approved by the Board of Directors and/or the stockholders or other equityholders of such Person or, if applicable, pursuant to a sale order approved by a bankruptcy court.

"Permitted Amendment" means an amendment to this Agreement and, if applicable the other Loan Documents, effected in connection with a Loan Modification Offer pursuant to Section 2.24, providing for an extension of a maturity date applicable to the Loans and/or Commitments of the Accepting Lenders and, in connection therewith, (a) a change in the Applicable Rate or interest rate pursuant to a PIK Election with respect to the Loans and/or Commitments of the Accepting Lenders, and/or (b) a change in the fees payable to, or the inclusion of new fees to be payable to, the Accepting Lenders, and/or (c) a change in Sections 2.08(b), 2.08(c), 2.11(a) (provided that in no event shall the Loans subject to a Loan Modification Offer have a shorter Weighted Average Life to Maturity than the Initial Term Loans), 2.11(e) and/or 2.11(f) with respect to the Loans and/or Commitments of the Accepting Lenders and/or (d) additional or modified covenants, events of default, or guarantees or other provisions (it being understood that to the extent that any covenant, event of default, guarantee or such other provision is added or modified for the benefit of any such Loans and/or Commitments, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default, guarantee or other provision is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Loans and/or Commitments, (ii) only applicable after the Latest Maturity Date at the time of such Loan



Modification Offer or (iii) in the aggregate, not materially more restrictive to the Loan Parties (as determined in good faith by the Borrower) when taken as a whole, than the terms of the Loans hereunder).

“Permitted Encumbrances” means:

(a) Liens for Taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are not required to be paid pursuant to Section 5.05 (assuming Section 5.05 were applicable thereto);

(b) Liens with respect to outstanding motor vehicle fines and carriers’, warehousemen’s, mechanics’, materialmen’s, landlord’s, repairmen’s or construction contractors’ Liens and other similar Liens, imposed by law or contract (to the extent providing for Liens that are similar in scope to the foregoing), arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days, or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers’ compensation, unemployment insurance, social security, retirement and other similar legislation or (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instrument for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);

(d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, completion guarantees, bankers acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) 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 past practices;

(e) minor survey exceptions, minor encumbrances, covenants, conditions, easements, rights-of-way, restrictions, encroachments, protrusions, by-law, regulation or zoning restrictions, reservations of or rights of others for sewers, electric lines, telegraph and telephone lines, cable television lines, gas and oil pipelines and other similar purposes and other similar encumbrances and minor title defects or irregularities affecting real property, that, in the aggregate, do not materially interfere with the ordinary conduct of the business of Holdings and its Restricted Subsidiaries, taken as a whole, or which are set forth in the title insurance policy delivered with respect to the Mortgaged Property and are “insured over” in such insurance policy;

(f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);

(g) Liens on goods the purchase price of which is financed by a documentary or trade letter of credit issued for the account of the Borrower or any of its Restricted Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments; provided that such Lien secures only the obligations of the Borrower or such Subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;

(h) the filing of UCC (or equivalent) financing statements solely as a precautionary measure or required notice in connection with operating leases or consignment of goods;

(i) rights of recapture of unused real property (other than any Mortgaged Property) in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any Governmental Authority;

(j) Liens in favor of deposit banks or securities intermediaries securing customary fees, expenses or charges in connection with the establishment, operation or maintenance of deposit accounts or securities accounts;

(k) [reserved];

(l) Liens arising from grants of licenses or sublicenses of Intellectual Property made in the ordinary course of business or that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole; provided that such Liens do not secure any Indebtedness;

(m) rights of setoff, banker's lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of 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;

(n) [reserved];

(o) securities to public utilities or to any Governmental Authority when required by the utility or other authority in connection with the supply of services or utilities to the Borrower and any Restricted Subsidiaries;

(p) servicing agreements, development agreements, site plan agreements and other agreements with any Governmental Authority pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially reduce the value of the assets of the Person or materially interfere with the use of such assets in the operation of the business of such Person;

(q) any security or quasi-security arising under any retention-of-title arrangement;

(r) [reserved];

(s) customary rights of first refusal or first offer, and tag, drag and similar rights in joint venture agreements;

(t) Liens arising from Permitted Investments described in clause (e) of the definition thereof; and

(u) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Requirements of Law in the ordinary course of business.

“Permitted First Priority Refinancing Debt” means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of senior secured notes or senior secured loans (or revolving commitments in respect thereof, with revolving commitments deemed loans in the full amount of such commitment); provided that (i) such Indebtedness is secured by the Collateral (and no other assets which are not Collateral) on a pari passu basis (but without regard to the control of remedies) with the Initial Term Loans, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments” or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by an entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to a Pari Passu Intercreditor Agreement and any applicable Junior Intercreditor Agreement; provided that if such Indebtedness is incurred at a time when the Closing Date Intercreditor Agreement is no longer in effect, then the Borrower, the other Loan Parties, the Administrative Agent, the Collateral Agent and the Senior Representative for such Indebtedness shall have executed and delivered a customary intercreditor agreement with the Administrative Agent and/or Collateral Agent substantially in the form of the Pari Passu Intercreditor Agreement, together with any immaterial changes to provide for the sharing of the Collateral on a pari passu basis among the holders of the Secured Obligations that constitute Senior Secured First Lien Indebtedness and the holders of such Permitted First Priority Refinancing Debt (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans). Permitted First Priority Refinancing Debt will include any Registered Equivalent Note issued in exchange therefor.

“Permitted Holders” means the Sponsor and limited partners of the Sponsor, Vista and limited partners of Vista, and the Management Investors.

“Permitted Investments” means any of the following, to the extent owned by Holdings or any Restricted Subsidiary:

(a) Dollars or such other currencies held by it from time to time in the ordinary course of business;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody's, having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of such country or such member state of the European Union is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks or (y) \$100,000,000 in the case of non-U.S. banks, or the Dollar Equivalent (any such bank in the foregoing clauses (i) or (ii) being an "Approved Bank"), in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than twelve (12) months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of \$250,000,000 or its equivalent for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States (ii) Canada, (iii) Switzerland, (iv) United Kingdom, or (v) any member state of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody's, in which such Person shall have a perfected first priority security interest (subject to no other Liens) or title to which shall have been transferred to such Person and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of \$250,000,000 or its equivalent, or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(g) securities with average maturities of twelve (12) months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, Canada, Switzerland, United Kingdom, a member of the European Union or by any political subdivision or taxing authority of any such state, member, commonwealth or territory having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) investments with average maturities of twelve (12) months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized or incorporated in such jurisdiction;

(j) investments, classified in accordance with GAAP as current assets of the Borrower or any Restricted Subsidiary, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000 or its equivalent, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;

(k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Subsidiary maintains its chief executive office and principal place of business; provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than twenty-four (24) months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

"Permitted Junior Priority Refinancing Debt" means any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party (and any Guarantee thereof by Holdings) in the form of one or more series of junior lien secured notes or junior lien secured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness is secured by the Collateral on a junior lien basis to the Initial Term Loans and the obligations in respect of any Permitted First Priority Refinancing Debt, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (iii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, "AHYDO catch-up payments", offers upon an event of default or excess cash flow payments (subject to the prior payment of the Loan Document Obligations or the prior offer thereof

to prepay the Loan Document Obligations)) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iv) such Indebtedness is not guaranteed by any entity that is not a Loan Party and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Closing Date Intercreditor Agreement and/or Junior Intercreditor Agreement, as applicable; provided that if such Indebtedness is the initial Permitted Junior Priority Refinancing Debt incurred by the Borrower, then the Borrower, the other Loan Parties, the Administrative Agent, the Collateral Agent and the Senior Representatives for such Indebtedness shall have executed and delivered a Junior Intercreditor Agreement. Permitted Junior Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees (including original issue discount and fees incurred in connection with the resulting Indebtedness) and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder; provided that the principal amount (or accreted value, if applicable) may exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended to the extent such excess amount (and the terms thereof) is otherwise permitted to be incurred under Section 6.01 (provided that such excess amount shall constitute a utilization of the relevant basket or exception under Section 6.01 pursuant to which such excess amount is permitted to be incurred), (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.01(a)(v), (a)(vii) or (a)(viii) (or except in the case of customary bridge loans which, subject to customary conditions (including no event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature prior to the maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended), Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and (except in the case of revolving commitments) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended and (c) (1) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Document Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Document Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith) or otherwise reasonably satisfactory to the Administrative Agent and (2) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of security to the Initial Term Loans, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of security to the Initial Term Loans on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended (as determined by the Borrower in good faith)

or otherwise reasonably satisfactory to the Administrative Agent. For the avoidance of doubt, it is understood and agreed that (x) notwithstanding anything in this Agreement to the contrary, in the case of any Indebtedness incurred to modify, refinance, refund, extend, renew or replace Indebtedness initially incurred in reliance on and measured by reference to a percentage of Consolidated EBITDA at the time of incurrence, and such modification, refinancing, refunding, extension, renewal or replacement would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the percentage of Consolidated EBITDA on the date of such modification, refinancing, refunding, extension, renewal or replacement, such percentage of Consolidated EBITDA restriction shall not be deemed to be exceeded so long as such incurrence otherwise constitutes a “Permitted Refinancing” and (y) a Permitted Refinancing includes successive Permitted Refinancings of the same Indebtedness.

“Permitted Reorganization” means any re-organization or other similar activities among Holdings, the Borrower and the Restricted Subsidiaries related to Tax planning and re-organization, so long as, after giving effect thereto, (a) the Loan Parties are in compliance with the Collateral and Guarantee Requirement and Sections 5.11 and 5.12, (b) taken as a whole, the value of the Collateral securing the Secured Obligations and the Guarantees by the Loan Guarantors of the Secured Obligations are not materially reduced as reasonably determined by the Administrative Agent and (c) the Liens in favor of the Collateral Agent for the benefit of the Secured Parties under the Security Documents are not materially impaired in the reasonable judgment of the Administrative Agent.

“Permitted Unsecured Refinancing Debt” means any unsecured Indebtedness incurred by the Borrower and/or any Loan Party in the form of one or more series of unsecured notes or unsecured loans (or revolving commitments in respect thereof, with revolving commitments deemed to be loans in the full amount of such commitments); provided that (i) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (ii) such Indebtedness does not have mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments” or offers upon an event of default) that could result in redemptions of such Indebtedness prior to the maturity of the Refinanced Debt, (iii) such Indebtedness is not guaranteed by any entity that is not a Loan Party, and (iv) such Indebtedness is not secured by any Lien on any property of Holdings, the Borrower or any Restricted Subsidiary. Permitted Unsecured Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

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

“PIK Election” has the meaning assigned to such term in Section 2.07(f).

“PIK Election Notice” means a notice duly executed by the Borrower substantially in the form of Exhibit C-3.

“PIK Interest Period” means (a) in the case of a Eurodollar Borrowing, the Interest Period with respect thereto and (b) in the case of an ABR Borrowing, the period commencing on the date of such Borrowing and ending on the earlier of (i) one or three months thereafter, as elected by the Borrower in the applicable PIK Election Notice and (ii) the date on which such ABR Borrowing is converted into a Eurodollar Borrowing in accordance with Section 2.07.

“Plan” means any employee pension benefit plan as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is or has been in the past six years sponsored, maintained or required to be contributed to by a Loan Party or any ERISA Affiliate.

“Planned Expenditures” has the meaning assigned to such term in clause (b) of the definition of “Excess Cash Flow”.

“Platform” has the meaning assigned to such term in Section 5.01.

“Prepayment Event” means:

(a) (i) any sale, transfer or other disposition of any property or asset of Holdings or any of its Restricted Subsidiaries permitted by Sections 6.05(f), (j), (k), (p) and (t), other than dispositions resulting in aggregate Net Proceeds not exceeding (A) \$15,000,000 in the case of any single transaction or series of related transactions and (B) \$30,000,000 for all such transactions during any fiscal year of Holdings and (ii) any Casualty Event; or

(b) the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 (other than any Credit Agreement Refinancing Indebtedness) or permitted by the Required Lenders pursuant to Section 9.02.

“Prepayment Percentage” means:

(a) with respect to Prepayment Events described in clause (b) of the definition of “Prepayment Event”, 100%; and

(b) with respect to Prepayment Events described in clause (a) of the definition of “Prepayment Event”, (x) from the Effective Date until the date on which a Compliance Certificate is delivered pursuant to Section 5.01(d) in respect of the first full fiscal quarter after the Effective Date, 100% and (y) thereafter, the applicable percentage set forth below under the caption “Prepayment Percentage”, as determined by reference to the Senior Secured Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(d).

<u>Senior Secured Net Leverage Ratio</u>	<u>Prepayment Percentage</u>
Greater than 6.00 to 1.00	100%
Less than or equal to 6.00 to 1.00 but greater than 5.25 to 1.00	50%
Less than or equal to 5.25 to 1.00	0%



For purposes of the foregoing, each change in the Prepayment Percentage resulting from a change in the Senior Secured Net Leverage Ratio shall be effective during the period commencing on and including the date a Compliance Certificate is delivered pursuant to Section 5.01(d) indicating such change and ending on the date immediately preceding the effective date of the next such change.

“Prime Rate” means, for any day, the “Prime Rate” as published by the Wall Street Journal for such day or, if the Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent); each change in the Prime Rate shall be effective on the date that such change is effective. The Prime Rate is not necessarily the lowest rate charged by any financial institution to its customers.

“Pro Forma Adjustment” means, for any Test Period with respect to the Acquired EBITDA of the applicable Pro Forma Entity or the Consolidated EBITDA of Holdings, the pro forma increase in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any applicable acquisition, Specified Transactions, dispositions, operational change or initiative as a result of actions taken or expected to be taken or a plan for realization shall have been established, for the purposes of realizing cost savings, operating expense reductions or other operating improvements and synergies; provided that (A) such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reduction, other operating improvements and synergies (on a “run rate” basis) had been realized on the first day of such period and, for purposes of projecting such pro forma increase to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, such calculation shall be made on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and “run rate” synergies had been realized commencing on the first day of such period and that such cost savings, operating expense reductions, other operating improvements and synergies were realized on a “run rate” basis during the entirety of such Test Period, in each case, net of the amount of actual benefits realized from such actions, (B) any Pro Forma Adjustment to Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate and (C) any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for cost savings, operating expense reductions, other operating improvements and synergies or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, for such Test Period and shall be subject to the 25% cap in clause (b) of the definition of Consolidated EBITDA as provided therein.

“Pro Forma Basis”, “Pro Forma Compliance” and “Pro Forma Effect” mean, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis or after giving Pro Forma Effect thereto, that

(a) to the extent applicable, the Pro Forma Adjustment and the Pro Forma Disposal Adjustment shall have been made and (b) the Transactions, all Specified Transactions, operational changes or initiatives described in the definition of “Pro Forma Adjustment” or “Consolidated EBITDA” and the following transactions in connection therewith that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made shall be deemed to have occurred as of the first day of the applicable period of measurement in such test, financial ratio or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Transaction, Specified Transaction, operational change or initiative (A) in the case of a Disposition of all or substantially all Equity Interests in any subsidiary of Holdings or any division, product line, or facility used for operations of Holdings, the Borrower or any of their respective Subsidiaries, shall be excluded and (B) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction”, shall be included, (ii) any retirement of Indebtedness, and (iii) any Indebtedness incurred or assumed by Holdings, the Borrower or any of their respective Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination and interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period; provided that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to operating expense reductions that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on Holdings, the Borrower or any of their respective Subsidiaries, and (z) factually supportable or (ii) otherwise consistent with the definition of Pro Forma Adjustment.

“Pro Forma Disposal Adjustment” means, for any Test Period with respect to any Sold Entity or Business, the pro forma increase or decrease in Consolidated EBITDA projected by the Borrower in good faith to be realizable within eighteen (18) months following the date the applicable Person, property, business, line of business, division, business unit or asset becomes a Sold Entity or Business as a result of contractual arrangements between the Borrower or any Restricted Subsidiary entered into with such Sold Entity or Business at the time of its disposal which represent an increase or decrease in Consolidated EBITDA which is incremental to the Disposed EBITDA of such Sold Entity or Business for the most recent Test Period prior to its disposal. Any such pro forma increase or decrease in Consolidated EBITDA shall be certified by a Financial Officer, the chief executive officer or president of the Borrower in the Compliance Certificate.

“Pro Forma Entity” has the meaning given to such term in the definition of “Acquired EBITDA”.

“Pro Forma Financial Statements” means the unaudited consolidated pro forma balance sheet of Holdings and its Subsidiaries as of December 31, 2019, and the related unaudited pro forma consolidated statement of income of Holdings and its Subsidiaries as of and for the twelve-month period then ended, prepared after giving effect to the Transactions (and which may

exclude, at the Borrower's option, the impact of purchase accounting effects required by GAAP) as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) and any other adjustments as agreed by the Sponsor and the Initial Lenders (which need not be prepared in compliance with Regulations S-X of the Securities Act of 1933, as amended, or (at the option of the Borrower) include adjustments for purchase accounting).

"Proposed Change" has the meaning assigned to such term in Section 9.02(c).

"Proposed Asset Sale Sweep Prepayment" has the meaning assigned to such term in Section 2.11(b).

"Proposed Voluntary Prepayment" has the meaning assigned to such term in Section 2.11(a)(ii).

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" has the meaning assigned to such term in Section 5.01.

"Qualified Equity Interests" means Equity Interests of Holdings or the Borrower other than Disqualified Equity Interests.

"Qualified Reporting Subsidiary" means any wholly-owned Restricted Subsidiary of Holdings that, together with its consolidated Restricted Subsidiaries, constitutes substantially all of the assets of Holdings and its consolidated Subsidiaries.

"Qualified Securitization Facility" means any Securitization Facility that meets the following conditions: (a) the board of directors of the Borrower shall 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 Securitization Subsidiary and (b) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Borrower).

"Qualifying Lender" has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

"Refinanced Debt" has the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness".

"Refinancing Amendment" means an amendment to this Agreement in form reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower and Holdings, (b) the Administrative Agent and (c) each applicable Additional Term Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.21.

"Required Additional Debt Terms" means, with respect to any Indebtedness, (a) such Indebtedness does not mature earlier than the Latest Maturity Date for the Initial Term Loans

(except in the case of customary bridge loans which, subject to customary conditions (including no payment or bankruptcy event of default), would either automatically be converted into or required to be exchanged for permanent refinancing that does not mature earlier than the Latest Maturity Date for the Initial Term Loans), (b) such Indebtedness does not have a shorter Weighted Average Life to Maturity than the Initial Term Loans, (c) if such Indebtedness is unsecured or secured by the Collateral on a junior lien basis to the Initial Term Loans, such Indebtedness does not have scheduled amortization or mandatory redemption features (other than customary asset sale, insurance and condemnation proceeds events, change of control offers, “AHYDO catch-up payments”, offers upon an event of default or, in the case of junior lien secured debt, excess cash flow payments (subject to the prior prepayment of the Loan Document Obligations or the prior offer thereof to prepay the Loan Document Obligations that constitute Senior Secured First Lien Indebtedness)) that could result in redemptions of such Indebtedness prior to the Latest Maturity Date, (d) such Indebtedness is not guaranteed by any entity that is not a Loan Party, (e) such Indebtedness that is secured (i) is not secured by any assets not securing the Secured Obligations and (ii) is subject to the relevant Intercreditor Agreement and (f) the terms and conditions of such Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, fees, collateral, guarantees, premiums and prepayment or redemption provisions) are not materially more favorable (when taken as a whole) to the lenders or investors providing such Indebtedness than the terms and conditions of this Agreement (when taken as a whole) are to the Lenders (unless (x) such terms and conditions are applicable only to periods after the Latest Maturity Date at such time, (y) the Lenders also receive the benefit of such more favorable terms and conditions or (z) such terms are reasonably satisfactory to the Administrative Agent) (together with, at the election of the Borrower, any applicable “equity cure” provisions with respect to any financial covenant) (it being understood that, to the extent that any covenant, event of default, guarantee or other provision is added or modified for the benefit of any such Indebtedness, no consent shall be required by the Administrative Agent or any of the Lenders if such covenant, event of default or guarantee is either (i) also added or modified for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of any such Indebtedness in connection therewith or (ii) only applicable after the Latest Maturity Date at such time); provided that the Borrower may, in its sole discretion, deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent at least five (5) Business Days prior to the incurrence of such indebtedness, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, and such certificate shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, controlling persons, trustees, administrators, managers, advisors and representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns of each of the foregoing.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building, or any occupied structure or facility.

“Removal Effective Date” has the meaning assigned to such term in Section 8.06.

“Repricing Transaction” means (a) the incurrence by the Borrower or any Loan Guarantor of any Indebtedness in the form of term debt financing (i) having an Effective Yield that is less than the Effective Yield for the Initial Term Loans and (ii) the proceeds of which are substantially concurrently used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, outstanding principal of Initial Term Loans or (b) any amendment to this Agreement with respect to the Initial Term Loans that results in an effective reduction in the Effective Yield for the Initial Term Loans. Any determination by the Administrative Agent with respect to whether a Repricing Transaction shall have occurred shall be made in the reasonable judgment of the Administrative Agent consistent with generally accepted financial practices and shall be conclusive and binding on all Lenders holding the Initial Term Loans.

“Required Lenders” means, at any time, Lenders having Term Loans representing more than 50% outstanding Term Loans at such time; provided, that, with respect to any determination of Required Lenders, Affiliated Debt Funds cannot, in the aggregate, account for more than 49.9% of the amounts included in such determination as provided in Section 9.04(f)(ii).

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, statutory instruments, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Resignation Effective Date” has the meaning assigned to such term in Section 8.06.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, director, company secretary or other similar officer, manager or a member of the Board of Directors of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any authorized signatory, director, manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a)(i) of the definition of the term “Collateral and Guarantee Requirement”, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party

shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests in Holdings, the Borrower or any Restricted Subsidiary.

“Restricted Prepayment Event” has the meaning assigned to such term in Section 2.11(g).

“Restricted Subsidiary” means, unless otherwise specified, any Subsidiary of Holdings, other than an Unrestricted Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.11(e).

“S&P” means S&P Global Ratings, and any successor thereto.

“Sanctioned Country” means, at any time, a country or territory which is the target of any comprehensive Sanctions (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria).

“Sanctions” means any economic sanctions administered or enforced by the United States Government (including without limitation, OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority (“Sanctions Authorities”).

“Sanctions Authorities” has the meaning assigned to such term in the definition of “Sanctions”.

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

“Secured Obligations” means the Loan Document Obligations.

“Secured Parties” means (a) each Lender, (b) the Administrative Agent (and each co-agent or sub-agent appointed by the Administrative Agent pursuant to Section 8.05), (c) the Collateral Agent, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (e) the permitted successors and assigns of each of the foregoing.

“Securitization Assets” means the accounts receivable, royalty and other similar rights to payment and any other assets related thereto subject to a Qualified Securitization Facility that are customarily sold or pledged in connection with securitization transactions and the proceeds thereof.

“Securitization Facility” means any of one or more receivables securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties and indemnities made in connection with such facilities) to Holdings, the Borrower or any Restricted Subsidiary (other than a Securitization Subsidiary) pursuant to which Holdings, the Borrower or any Restricted Subsidiary sells or grants a security interest in its accounts receivable or assets related thereto that are customarily sold or pledged in connection with securitization transactions to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“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 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 Documents” means the Collateral Agreement, the Mortgages and each other security agreement or pledge agreement executed and delivered pursuant to the Collateral and Guarantee Requirement, Sections 5.11, 5.12 or 5.14 to secure any of the Secured Obligations.

“Senior Representative” means, with respect to any series of Indebtedness permitted by this Agreement to be secured on the Collateral on a pari passu or junior basis, the trustee, administrative agent, collateral agent, security agent or similar agent 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.

“Senior Secured First Lien Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries, other than any such Indebtedness to the extent secured on a junior basis to the Liens granted under the Security Documents in favor of the Collateral Agent for the benefit of the Secured Parties in respect of the Initial Term Loans. For the avoidance of doubt, any loans made under the Existing First Lien Credit Agreement shall constitute Senior Secured First Lien Indebtedness.

“Senior Secured First Lien Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured First Lien Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Senior Secured Indebtedness” means any Indebtedness of Holdings and its Restricted Subsidiaries that is secured by a Lien on any asset of Holdings or any of the Restricted Subsidiaries.

“Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Senior Secured Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Settlement” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“Settlement Asset” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

“Settlement Indebtedness” means any payment or reimbursement obligation in respect of a Settlement Payment.

“Settlement Lien” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“Settlement Payment” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“Settlement Receivable” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“Sold Entity or Business” has the meaning assigned to such term in the definition of the term “Consolidated EBITDA”.

“Solicited Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(3).

“Solicited Discounted Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Solicited Discounted Prepayment Notice” means an irrevocable written notice of a Borrower Solicitation of Discounted Prepayment Offers made pursuant to Section 2.11(a)(iii)(D), substantially in the form of Exhibit K.



“Solicited Discounted Prepayment Offer” means the irrevocable written offer by each Term Lender, substantially in the form of Exhibit L, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“Solicited Discounted Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(D)(1).

“Specified Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Prepayment Notice” means an irrevocable written notice of the Borrower of Specified Discount Prepayment made pursuant to Section 2.11(a)(iii)(B) substantially in the form of Exhibit G.

“Specified Discount Prepayment Response” means the irrevocable written response by each Term Lender, substantially in the form of Exhibit H, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(1).

“Specified Discount Proration” has the meaning assigned to such term in Section 2.11(a)(iii)(B)(3).

“Specified Event of Default” means an Event of Default under Section 7.01(a), (b), (h) or (i).

“Specified Transaction” means any Investment, acquisition (including the commitment of activities constituting such business), sale, transfer or other disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation, the termination or discontinuation of activities constituting any business, commencement of a New Project or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis after giving Pro Forma Effect thereto.

“Sponsor” means each of GTCR Fund XI/B LP, GTCR Fund XI/C LP, GTCR Co-Invest XI LP and in each case, each of their respective associated funds and each of their respective Affiliates (other than any portfolio companies of any of the foregoing).

“Springing Maturity Date” has the meaning assigned to such term in the definition of “Term Maturity Date.”

“Starter Basket” has the meaning assigned to such term in the definition of “Available Amount”.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve, liquid asset or similar percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by any Governmental Authority to be applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities. Such reserve, liquid asset or similar percentages shall include those imposed pursuant to Regulation D of the Board of Governors. Eurodollar Loans shall be deemed to be subject to such reserve, liquid asset or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any other Requirements of Law. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Submitted Amount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“Submitted Discount” has the meaning assigned to such term in Section 2.11(a)(iii)(C)(1).

“subsidiary” means, with respect to any Person (the “parent”) at any date (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more subsidiaries of such Person owns more than a 50% equity interest at the time.

“Subsidiary” means any direct or indirect subsidiary of Holdings (unless otherwise specified).

“Subsidiary Loan Party” means each Restricted Subsidiary of Holdings (other than the Borrower) that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Swap 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.

“Target Person” has the meaning assigned to such term in Section 6.04.

“Tax Distributions” has the meaning assigned to such term in Section 6.07(a)(vii)(A).

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

“Term Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder. The amount of each Lender’s Term Commitment as of the Effective Date is set forth on Schedule 2.01. As of the Effective Date, the total Term Commitment is \$260,000,000.

“Term Lender” means a Lender with a Term Commitment or an outstanding Term Loan.

“Term Loans” means Initial Term Loans and Other Term Loans, as the context requires.

“Term Maturity Date” means May 22, 2026 (or, with respect to any Term Lender that has extended the maturity date of its Term Loans in accordance with the terms of this Agreement, the extended maturity date set forth in the applicable Loan Modification Agreement, Refinancing Amendment or other amendment hereto); provided that, if, as of June 30, 2024 (the “Springing Maturity Date”), any Existing First Lien Loans, or refinancing Indebtedness in respect thereof, in each case that mature or require scheduled amortization in excess of 1.00% per annum or other scheduled payments of principal prior to June 30, 2024 remain outstanding, then the “Term Maturity Date” shall instead be the Springing Maturity Date. Upon the occurrence of the circumstances set forth in the proviso to the immediately preceding sentence, the Borrower shall provide written notice thereof to the Administrative Agent; provided that failure or delay in the provision of such notice shall not affect the operation of such proviso.

“Termination Date” means the date on which all Commitments have expired or been terminated and all Secured Obligations have been paid in full in cash (other than contingent obligations not yet accrued and payable).

“Test Period” means, at any date of determination, the period of four consecutive fiscal quarters of Holdings then last ended as of such time for which financial statements have been delivered pursuant to Section 5.01(a) or (b) or, at the option of the Borrower, in connection with a Limited Condition Transaction, the period of four consecutive fiscal quarters of Holdings for which financial statements have been delivered to the Administrative Agent on or prior to the applicable LCT Test Date; provided that for any date of determination before the delivery of the first financial statements pursuant to Section 5.01(a) or (b), the Test Period shall be the period of four consecutive fiscal quarters of Holdings ended as of December 31, 2019.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio, on a Pro Forma Basis, of (a) Consolidated Total Net Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Test Period.

“Trademarks” has the meaning assigned to such term in the Collateral Agreement.

“Transaction” means each of the following transactions consummated or to be consummated in connection therewith:

(a) the execution and delivery of the Loan Documents to be entered into on the Effective Date and the funding of the Initial Term Loans on the Effective Date;

(b) the permanent reduction of all of the Revolving Commitments under (and as defined in) the Existing First Lien Credit Agreement and the repayment of all Revolving Loans (as defined in the Existing First Lien Credit Agreement) and other obligations outstanding thereunder (collectively, the “Existing Revolving Facility Refinancing”); and

(c) the payment of the Transaction Costs.

“Transaction Costs” means all fees, premiums, original issue discount, costs and expenses incurred or payable by Holdings, the Borrower or any other Subsidiary in connection with the Transactions, including fees, costs and expenses of any counsel, consultants and other advisors.

“Treasury Rate” means, with respect to the Initial Term Loans as of any date that an applicable prepayment or repricing is consummated, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such consummation date (or, if such Federal Reserve Statistical Release is no longer published, any publicly available source or similar market data) most nearly equal to the period from such consummation date (or other relevant date) to (but not including) the second anniversary of the Effective Date; provided, however, that if the period from any date that an applicable prepayment or repricing is consummated to (but not including) the second anniversary of the Effective Date is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from any date that an applicable prepayment or repricing is consummated to (but not including) the second anniversary of the Effective Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used; provided, further, that in no case shall the Treasury Rate be less than zero. The Borrower will (a) calculate the Treasury Rate on the second Business Day preceding the applicable date that an applicable prepayment or repricing is consummated (or other relevant date) and (b) on or prior to such consummation date file with the Administrative Agent and the Lenders a certificate of a Responsible Officer of the Borrower setting forth the Make-Whole Amount and the Treasury Rate and showing the calculation of each in reasonable detail.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or Alternate Base Rate.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” and “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unaudited Financial Statements” means the interim, consolidated financial statements of the Borrower and its Subsidiaries for the months ended January 31, 2020, February 29, 2020 and March 31, 2020.

“Unfunded Pension Liability” of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

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

“United States Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(C).

“Unrestricted Subsidiary” means any Subsidiary designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.13 subsequent to the Effective Date.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“Vista” means Vista Equity Partners Management, LLC and its associated funds and each of their respective Affiliates, including Vista Equity Partners Fund IV, L.P. and Vista Equity Partners Fund V, L.P. (other than any portfolio companies of any of the foregoing).

“Voluntary Prepayment Offer Notice” has the meaning assigned to such term in Section 2.11(a)(ii).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness, in each case, without giving effect to any reductions of amortization or other scheduled payments for periods where amortization has been reduced as a result of the prepayment of the applicable Indebtedness. Notwithstanding anything herein to the contrary, the Weighted Average Life to Maturity shall not give effect to any “springing maturity date” unless such “springing maturity date” is actually triggered in accordance with its terms.

“Wholly Owned Restricted Subsidiary” means any Restricted Subsidiary that is a Wholly Owned Subsidiary.

“Wholly Owned Subsidiary” means, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (ii) any partnership, limited liability company, association, or other similar non-corporate entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of the preceding clauses (i) and (ii), director’s qualifying shares and/or other nominal amount of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

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

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## SECTION 1.02 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “Eurodollar Loan” or “ABR Loan”) or by Class and Type (e.g., a “Eurodollar Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Term Borrowing”).

## SECTION 1.03 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (a) any definition of or reference to any Organizational Document, agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such Organizational Document, agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or other modifications set forth herein) except that any reference to any agreement, instrument or document as in effect on the date hereof or the Effective Date (as applicable) shall refer to such agreement, instrument or document as in effect on such date without giving effect to any subsequent amendment, restatement, supplement or other modification unless same has been approved by the requisite Lenders in accordance with Section 9.02, (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any Requirement of Law or any law, statute, treaty, rule, guideline, regulation, ordinance or code, shall, unless otherwise specified, refer to such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code as amended, modified or supplemented from time to time and shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, interpreting or administering such Requirement of Law, law, statute, treaty, rule, guideline, regulation, ordinance or code.

#### SECTION 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise prescribed herein.

(b) Notwithstanding anything in this Agreement to the contrary, for purposes of determining compliance with any test contained in this Agreement, the Total Net Leverage Ratio, the Senior Secured First Lien Net Leverage Ratio and the Senior Secured Net Leverage Ratio shall be calculated on a Pro Forma Basis to give effect to the Transaction and all Specified Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made.

#### SECTION 1.05 Effectuation of Transactions.

All references herein to Holdings, the Borrower and their respective Subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of Holdings, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

#### SECTION 1.06 Limited Condition Transactions.

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, when calculating any applicable ratio, the amount or availability of the Available Amount or any other basket (including any baskets based on Consolidated EBITDA or total assets), designating Unrestricted Subsidiaries or determining other compliance with this Agreement (including the determination of compliance with representations, warranties or any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Limited Condition Transaction, the date of determination of such ratio, the amount or availability of the Available Amount or any other basket and determination of the accuracy of any representation or warranty or whether a Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant or provision shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), be deemed to be (i) with respect to debt prepayments, the time of delivery of irrevocable notice with respect to such prepayment, (ii) with respect to Restricted Payments, the time of the declaration of such Restricted Payments and (iii) with respect to all other Limited Condition Transactions, the date the definitive agreements for such Limited Condition Transaction are entered into (the applicable date in clauses (i), (ii) or (iii), the "LCT Test Date") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Transaction or other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable Test Period ending prior to the LCT Test Date or on the LCT Test Date, as applicable, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower and its Subsidiaries) at or prior to the consummation of



the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Transaction or other related transactions. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other transaction on or 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 for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated (subject to the proviso to the definition of "Limited Condition Transaction").

#### SECTION 1.07 Currency Equivalents Generally.

For purposes of determining compliance as of any date with any covenant or incurrence test (other than the calculation of compliance with any financial ratio for purposes of taking action hereunder) under any Loan Document or for purposes of making any determination as to whether any Default or Event of Default has occurred hereunder or for any other specified purpose hereunder, amounts incurred or outstanding in currencies (other than Dollars) shall be translated into Dollars at the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publically available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency (the "Exchange Rate"), as in effect at 11:00 a.m. (London time) on the date of such Specified Transaction; provided that, if any Indebtedness or Liens are incurred to extend, replace, refund, refinance, renew or defease other Indebtedness or Liens denominated in currencies (other than Dollars) and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding, refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness). No Default or Event of Default shall arise as a result of changes in currency exchange rates occurring after the time any Specified Transaction has been consummated so long as such Specified Transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth above. For purposes of the calculation of compliance with any financial ratio for purposes of taking any action hereunder, on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 4.01(h)), as applicable, for the relevant

Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Swap Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar Equivalent amount of such Indebtedness.

SECTION 1.08 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 1.09 Timing of Payment or Performance.

Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

SECTION 1.10 Certifications.

All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

SECTION 1.11 Compliance with Certain Sections.

Without limiting the reclassification rights described in any Section of Article VI, for purposes of determining compliance with Article VI, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Affiliate transaction, restrictive agreement, or prepayment of Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions of the same covenant then permitted pursuant to any clause or subsection of such Article VI (other than Sections 6.01(a)(i), 6.01(a)(xx), 6.02(i) and 6.02(xix)), such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses at the time of such transaction or any later time from time to time, in each case, as determined by the Borrower in its sole discretion at such time and thereafter may be reclassified by the Borrower in any manner not expressly prohibited by this Agreement. If any of the baskets set forth in this Agreement are exceeded solely as a result of fluctuations to Consolidated EBITDA for the most recently completed fiscal quarter or any PIK Election, in each case, after the last time such baskets were calculated for any purpose under this Agreement, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations or PIK Elections. Each direct or indirect Subsidiary of Holdings that is required to be joined and is joined as a Loan Party pursuant to Section 5.11 shall, until the completion of such joinder, be deemed for the purposes of Article VI of this Agreement to be a Loan Party from and after the Effective Date (or, if later, the date of formation or acquisition of such subsidiary). In the event that any "basket" contained in Article VI (or any defined term referred to therein) based on a fixed amount and/or a percentage of Consolidated

EBITDA corresponds to an equivalent “basket” in Article VI of the Existing First Lien Credit Agreement, then any utilization of such “basket” under the Existing First Lien Credit Agreement as of the Effective Date shall be deemed to have also utilized the equivalent “basket” in Article VI to the same extent.

#### SECTION 1.12 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

### ARTICLE II

#### THE CREDITS

##### SECTION 2.01 Commitments.

Subject to the terms and conditions set forth herein, each Term Lender severally, and not jointly, agrees to make Term Loans to the Borrower on the Effective Date denominated in Dollars in a principal amount not exceeding such Term Lender’s Term Commitment. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

##### SECTION 2.02 Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required hereby.

(b) Subject to Section 2.14, each Term Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that a Eurodollar Borrowing that results from a continuation of one or more outstanding Eurodollar Borrowings may be in an aggregate amount that is equal to such outstanding Borrowings. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of

the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of eight Eurodollar Borrowings outstanding.

SECTION 2.03 Requests for Borrowings.

To request a Term Borrowing, the Borrower shall notify the Administrative Agent of such request by email or facsimile to the Administrative Agent of a written Borrowing Request signed by the Borrower substantially in the form of Exhibit C-1 (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing (or, in the case of any Eurodollar Borrowing to be made on the Effective Date, two (2) Business Days) or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, two (2) Business Days prior to the date of the proposed Borrowing, or, in each case, such later time as is acceptable to the Administrative Agent. Each such written Borrowing Request shall specify the following information:

- (i) the Class of the applicable Term Borrowing;
- (ii) the aggregate amount of such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the Borrower's account or accounts to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified as to any requested Borrowing in Dollars, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 [Reserved].

SECTION 2.05 [Reserved].

SECTION 2.06 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to an account of the Borrower designated by the Borrower.

(b) [Reserved].

(c) The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 9.03(c).

#### SECTION 2.07 Interest Elections.

(a) Each Term Borrowing of the applicable Class initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by facsimile or other electronic transmission of a written Interest Election Request signed by the Borrower, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(c) Each written Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month’s duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section 2.07, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing of one (1) month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing in excess of one (1) month.

(f) Notwithstanding anything to the contrary herein, but subject to Section 2.13(h) and any adjustment in interest rate contemplated by Section 2.13 and by the definition of “Applicable Rate,” with respect to any PIK Interest Period for Initial Term Loans ending prior to the third anniversary of the Effective Date, the Borrower may elect (a “PIK Election”) to have all or a portion of the interest for such PIK Interest Period paid in kind; provided that any PIK Election made with respect to any period that ends prior to the second anniversary of the Effective Date must apply to the entire interest payment for such period. In order to make a PIK Election for a particular PIK Interest Period, the Borrower must deliver a PIK Election Notice to the Administrative Agent by 5:00 p.m. (New York City time) at least two (2) Business Days prior to the first day of such PIK Interest Period, in which case, on and as of each applicable Interest Payment Date for such PIK Interest Period, such portion of accrued interest so elected to be paid-in-kind shall be automatically capitalized and added to (and constitute part of) the then-outstanding principal amount of the Initial Term Loans on the applicable Interest Payment Date for all purposes of this Agreement and the other Loan Documents, and shall bear interest in accordance with this Agreement. For the avoidance of doubt, the Interest Periods and Interest Payment Dates applicable to the Initial Term Loans shall not be affected by any PIK Election (other than with respect to the payment of the applicable interest payment (or the portion thereof, as applicable) in kind rather than in cash in accordance with this Section 2.07(f) and the modification of the rate of such interest as provided herein). If the Borrower shall have failed to deliver a PIK Election Notice in respect of a PIK Interest Period prior to the deadline required under this Section 2.07(f), then no PIK Election shall apply to such PIK Interest Period and the interest payment for such Interest Period shall be paid entirely in cash.

## SECTION 2.08 Termination and Reduction of Commitments.

(a) Unless previously terminated, the Term Commitments shall automatically terminate and be permanently reduced to zero upon funding of the Term Loans on the Effective Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class subject only to the premium described in Section 2.11(a)(i), provided that each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$500,000 and not less than \$500,000 unless such amount represents all of the remaining Commitments of such Class.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section 2.08 at least one (1) Business Day prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 shall be irrevocable. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

## SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10.

(b) [Reserved].

(c) Each Lender shall maintain in accordance with its usual practice accounts or records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal (including, for the avoidance of doubt, the amount of interest that has been added to the outstanding principal of the Initial Term Loans pursuant to any PIK Election) and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall, in connection with the maintenance of the Register in accordance with Section 9.04(b)(iv), maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal (including, for the avoidance of doubt, the amount of interest that has been added to the outstanding principal of the Initial Term Loans pursuant to any PIK Election) or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. 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.

(e) The entries made in the accounts maintained pursuant to paragraphs (c) and (d) of this Section 2.09 shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement.

(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a Note. In such event, the Borrower shall execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns).

#### SECTION 2.10 Repayment of Principal.

(a) To the extent not previously paid, all Term Loans shall be due and payable on the Term Maturity Date.

(b) Prior to any prepayment of any Term Borrowings of any Class hereunder pursuant to Section 2.11(a)(i), 2.11(c) or 2.11(d), the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Administrative Agent in writing by facsimile or other electronic transmission of such election not later than 2:00 p.m., New York City time, one (1) Business Day before the scheduled date of such repayment. In the absence of a designation by the Borrower as described in the preceding sentence, such payments shall be applied on a pro rata basis to the Term Borrowings outstanding. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid plus (if applicable) the Applicable Prepayment Premium with respect thereto.

#### SECTION 2.11 Prepayment of Loans.

(a) (i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part; provided that if the Borrower makes a voluntary prepayment of Initial Term Loans pursuant to this Section 2.11(a)(i) or a mandatory prepayment of Initial Term Loans pursuant to Section 2.11(c) (other than with respect to a Prepayment Event described in clause (a)(ii) of the definition thereof), or effects any Repricing Transaction, in each case prior to the date that is three years after the Effective Date, such prepayment or Repricing Transaction shall be accompanied by a premium (the "Applicable Prepayment Premium") equal to:

(A) if the aggregate amount of the Initial Term Loans so prepaid or repriced during such period is less than or equal to \$91,000,000, 3.00% of the principal amount of the Initial Term Loans so prepaid or repriced; or

(B) if the aggregate amount of the Initial Term Loans so prepaid or repriced during such period is greater than \$91,000,000, then (x) the first \$91,000,000 of such Initial Term Loans shall be subject to the premium described in clause (A) above and (y) all amounts in excess of \$91,000,000 shall be subject to a premium equal to:



(1) if such prepayment is made prior to the date that is two years after the Effective Date, the Make-Whole Amount with respect to the principal amount of the Initial Term Loans so prepaid or repriced; or

(2) if such prepayment is made on or after the date that is two years after the Effective Date but prior to the date that is three years after the Effective Date, 6.00% of the principal amount of the Initial Term Loans so prepaid or repriced;

provided that, for the avoidance of doubt, in the case of a prepayment or repricing of Initial Term Loans to which the preceding clause (B) applies, the Applicable Prepayment Premium with respect thereto shall be allocated (x) first, in accordance with preceding clause (B) (x) on a pro rata basis among the Lenders holding the Initial Term Loans and (y) second, in accordance with preceding clause (B)(y) on a pro rata basis among the Lenders holding the Initial Term Loans.

Notwithstanding anything to the contrary contained herein, (x) the Applicable Prepayment Premium shall be due whether or not such prepayment occurred before or after an Event of Default has occurred or is continuing, whether or not there has been an acceleration of the maturity of the Initial Term Loans, before or after the commencement of any voluntary or involuntary proceeding under any Debtor Relief Law, and whether or not in connection with a Change of Control and (y) if the Initial Term Loans become due and payable prior to the third anniversary of the Effective Date as a result of the acceleration of the maturity thereof in connection with an Event of Default or in connection with a voluntary or involuntary proceeding under any Debtor Relief Law, an amount equal to the Applicable Prepayment Premium with respect to the Initial Term Loans then outstanding shall become immediately due and payable.

The Lenders and the Loan Parties agree that: (i) a prepayment or repayment of the Initial Term Loans pursuant to Section 2.11(a)(i); (ii) a prepayment or repayment of the Initial Term Loans pursuant to Section 2.11(c) (other than with respect to a Prepayment Event described in clause (a)(ii) of the definition thereof); (iii) a Repricing Transaction with respect to the Initial Term Loans or (iv) an acceleration of all or any portion of the Initial Term Loans following an Event of Default (including due to the operation of the clause in Section 7.01 appearing after the final semi-colon therein), in each case, shall cause commercial harm to the interests of the Lenders and the prepayment premium payable pursuant to this Section 2.11(a)(i) (x) constitutes reasonable and proportionate compensation for such harm, (y) is the product of an arm's length transaction between sophisticated parties having received independent legal advice and (z) is payable notwithstanding the then prevailing market conditions at the time payment of the prepayment premium is made, and the Lenders have agreed to provide the Initial Term Loans in reliance on each such acknowledgement by the Loan Parties party hereto. The parties hereto acknowledge and agree that (i) payment of the Applicable Prepayment Premium constitutes liquidated damages and is not a penalty (and is an inducement to each Lender to provide and/or maintain the Initial Term Loans), (ii) the actual amount of damages to the Lenders or profits lost by the Lenders as a result of prepayment, repayment or repricing hereunder would be impracticable and extremely difficult to ascertain; and (iii)

the amount of the Applicable Prepayment Premium is provided by mutual agreement of the Loan Parties party hereto and the Lenders, as a reasonable estimation and calculation of the damages that the Lenders would incur upon the occurrence of an applicable prepayment, repayment or repricing hereunder and the Applicable Prepayment Premium is reasonable in light of the circumstances. The Applicable Prepayment Premium shall be fully earned, and due and payable, on the date of such payment, prepayment, repayment or repricing, or on the date such payment, prepayment, repayment or repricing is required to be made, as applicable, and non-refundable when made. If all or any portion of an Initial Term Loan is accelerated for any reason pursuant to the terms herein, the Applicable Prepayment Premium shall be calculated as if the date of acceleration of such Initial Term Loan was the date of prepayment of such Initial Term Loan (or the relevant portion thereof). The parties hereto further acknowledge and agree that the Applicable Prepayment Premium is not intended to act as a penalty or to punish the Loan Parties or their respective Subsidiaries for any such prepayment, repayment or repricing, as applicable. The Loan Parties' obligation to pay the Applicable Prepayment Premium will not be subject to counterclaim or setoff for, or otherwise be affected by, any claim or dispute any Loan Party or any Subsidiary thereof may have (other than a claim of payment). Each Loan Party hereto expressly waives the provisions of any present or future law which prohibits or may prohibit the collection of the prepayment premium in any of the circumstances set forth in this Section 2.11(a)(i), and expressly acknowledges that its agreement to pay the prepayment premium hereunder has been relied upon by the Lenders in providing the Initial Term Loans and/or becoming a Lender.

(ii) If the Borrower intends to make a voluntary prepayment of Existing First Lien Loans (other than in connection with a Permitted Refinancing (as defined in the Existing First Lien Credit Agreement as in effect on the Effective Date) of such Existing First Lien Loans) (the amount of such intended voluntary prepayment, the "Proposed Voluntary Prepayment"), the Borrower must first notify the Administrative Agent in writing and, therein, offer to make a voluntary prepayment of Term Loans in an aggregate principal amount equal to the product of (x) the amount of such Proposed Voluntary Prepayment and (y) a fraction, the numerator of which is the outstanding principal amount of Term Loans and the denominator of which is the aggregate outstanding principal amount of Term Loans and Existing First Lien Loans, taken together (such notice and offer, the "Voluntary Prepayment Offer Notice"). Each Lender shall be entitled to accept or decline its pro rata share of any such offer in its sole discretion; provided, that if the Borrower has not been notified by the Administrative Agent within two (2) Business Days after the Borrower delivered the Voluntary Prepayment Offer Notice that any Lender has accepted such offer, such Lender shall be deemed to have declined the prepayment offer. If any Lender accepts such prepayment offer, the Borrower shall prepay such Lender's Term Loan in an amount equal to such Lender's pro rata share of the Proposed Voluntary Prepayment within one (1) Business Day after it makes the corresponding voluntary prepayment under the Existing First Lien Credit Agreement. For the avoidance of doubt, the Applicable Prepayment Premium shall not apply to any prepayment of Term Loans made pursuant to this Section 2.11(a)(ii).

(iii) Notwithstanding anything in any Loan Document to the contrary, so long as no Event of Default has occurred and is continuing, Holdings, the Borrower or any of their respective Subsidiaries may offer to prepay all or a portion of the outstanding Class of any Term Loans on the following basis:

(A) Holdings, the Borrower or any of their respective Subsidiaries shall have the right to make a voluntary prepayment of Term Loans at a discount to par (such prepayment, the “Discounted Term Loan Prepayment”) pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers, in each case made in accordance with this Section 2.11(a)(iii); provided that (x) Holdings, the Borrower or any of their respective Subsidiaries shall not initiate any action under this Section 2.11(a)(iii) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by Holdings, the Borrower or any of their respective Subsidiaries on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date Holdings, the Borrower or any of their respective Subsidiaries were notified that no Term Lender was willing to accept any prepayment of any Term Loan and/or Other Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of Holdings’, the Borrower’s or any of their respective Subsidiaries’ election not to accept any Solicited Discounted Prepayment Offers and (y) each Lender participating in any Discounted Term Loan Prepayment acknowledges and agrees that in connection with such Discounted Term Loan Prepayment, (1) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to participate in such Discounted Term Loan Prepayment (“Excluded Information”), (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to participate in such Discounted Term Loan Prepayment notwithstanding such Lender’s lack of knowledge of the Excluded Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; provided, further, that any Term Loan that is prepaid will be automatically and irrevocably cancelled.

(B) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with

three (3) Business Days' notice in the form of a Specified Discount Prepayment Notice; provided that (I) any such offer shall be made available, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche 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 tranche, the tranche or tranches 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 and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 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 relevant Term 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 City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the "Specified Discount Prepayment Response Date").

(2) Each relevant 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 relevant then outstanding Term Loans at the Specified Discount and, if so (such accepting Term Lender, a "Discount Prepayment Accepting Lender"), the amount and the tranches 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, Holdings, the Borrower or any of their respective Subsidiaries will make prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2); 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries 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 tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches 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, tranche 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by Holdings, the Borrower or any of their respective Subsidiaries on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with three (3) Business Days’ notice in the form of a Discount Range Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the “Discount Range Prepayment Amount”), the tranche or tranches 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 tranche of Term Loans willing to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the

Borrower or any of their respective Subsidiaries shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 relevant Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time, on the third Business Day after the date of delivery of such notice to the relevant Term Lenders (the “Discount Range Prepayment Response Date”). Each relevant 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 Term Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender’s Term Loans (the “Submitted Amount”) such 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 Holdings, the Borrower or any of their respective Subsidiaries 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). Holdings, the Borrower or any of their respective Subsidiaries agree 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 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 Lender, a “Participating Lender”).

(3) If there is at least one Participating Lender, Holdings, the Borrower or any of their respective Subsidiaries will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the respective Term Lenders' responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Lender to be prepaid at the Applicable Discount on such date, and (z) 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 Holdings, the Borrower or any of their respective Subsidiaries and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to Holdings, the Borrower or any of their respective Subsidiaries shall be due and payable by the Borrower on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, Holdings, the Borrower or any of their respective Subsidiaries may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with three (3) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; provided that (I) any such solicitation shall be extended, at the sole discretion of Holdings, the Borrower or any of their respective Subsidiaries, to each Term Lender and/or each Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "Solicited Discounted Prepayment Amount") and the tranche

or tranches of Term Loans, Holdings, the Borrower or any of their respective Subsidiaries is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such an event, each such offer will be treated as a separate offer pursuant to the terms of this Section), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$1,000,000 and whole increments of \$500,000 in excess thereof and (IV) each such solicitation by Holdings, the Borrower or any of their respective Subsidiaries shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each relevant Term 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 Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York City time on the third Business Day after the date of delivery of such notice to the relevant 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”) such Term Lender is willing to allow to be applied to the prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the “Offered Amount”) such Term Lender is willing to have prepaid subject to such 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 Holdings, the Borrower or any of their respective Subsidiaries with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Holdings, the Borrower or any of their respective Subsidiaries shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to Holdings, the Borrower or any of their respective Subsidiaries (the “Acceptable Discount”), if any. If Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries 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”), Holdings, the Borrower or any of their respective Subsidiaries 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 Holdings, the Borrower or any of their respective Subsidiaries by the Acceptance Date, Holdings, the Borrower or any of their respective Subsidiaries 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 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 (in consultation with Holdings, the Borrower or any of their respective Subsidiaries and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the tranches of Term Loans (the “Acceptable Prepayment Amount”) to be prepaid by Holdings, the Borrower or any of their respective Subsidiaries at the Acceptable Discount in accordance with this Section 2.11(a)(iii)(D). If Holdings, the Borrower or any of their respective Subsidiaries elects to accept any Acceptable Discount, then Holdings, the Borrower or any of their respective Subsidiaries agrees to accept all Solicited Discounted Prepayment Offers received by 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 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”). Holdings, the Borrower or any of their respective Subsidiaries will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches 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 Holdings, the Borrower or any of their respective Subsidiaries 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) Holdings, the Borrower or any of their respective Subsidiaries of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be

prepaid, (II) each Term Lender who made a Solicited Discounted Prepayment Offer of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches 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 the Borrower and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Borrower shall be due and payable by the Borrower 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, Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of reasonable and customary fees and expenses from Holdings, the Borrower or any of their respective Subsidiaries in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, Holdings, the Borrower or any of their respective Subsidiaries shall prepay such Term Loans on the Discounted Prepayment Effective Date. Holdings, the Borrower or any of their respective Subsidiaries shall make such prepayment to the Auction 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 2:00 p.m. New York City time on the Discounted Prepayment Effective Date. 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 2.11(a)(iii) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable. The aggregate principal amount of the tranches of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches 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 2.11(a)(iii), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by Holdings, the Borrower or any of their respective Subsidiaries.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.11(a)(iii), 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 Business Day.

(I) Each of Holdings, the Borrower or any of their respective Subsidiaries and the Lenders acknowledges and agrees that the Auction Agent may perform any and all of its duties under this Section 2.11(a)(iii) 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 their respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.11(a)(iii) as well as activities of the Auction Agent.

(J) Holdings, the Borrower or any of their respective Subsidiaries 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, as applicable (and if such offer is revoked pursuant to the preceding clauses, any failure by the Borrower to make any prepayment to a Term Lender, as applicable, pursuant to this Section 2.11(a)(iii) shall not constitute a Default or Event of Default under Section 7.01 or otherwise).

(b) If the Borrower intends to make a mandatory prepayment of Existing First Lien Loans pursuant to Section 2.11(c) of the Existing First Lien Credit Agreement with respect to an event described in clause (a)(i) of the definition of "Prepayment Event" as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date (the amount of such intended mandatory prepayment, the "Proposed Asset Sale Sweep Prepayment"), the Borrower must first notify the Administrative Agent in writing and, therein, offer to make a prepayment of Term Loans in an aggregate principal amount equal to the product of (x) the amount of such Proposed Asset Sale Sweep Prepayment and (y) a fraction, the numerator of which is the outstanding principal amount of Term Loans and the denominator of which is the aggregate outstanding principal amount of Term Loans and Existing First Lien Loans, taken together (such notice and offer, the "Mandatory Prepayment Offer Notice"). Each Lender shall be entitled to accept or decline its pro rata share any such offer in its sole discretion; provided, that if the Borrower has not been notified by the Administrative Agent within two (2) Business Days after the Borrower delivered the Mandatory Prepayment Offer Notice that any Lender has accepted such offer, such Lender shall be deemed to have declined the prepayment offer. If any Lender accepts

such prepayment offer, the Borrower shall prepay such Lender's Term Loans in an amount equal to such Lender's pro rata share of the Proposed Asset Sale Sweep Prepayment within one (1) Business Day after it makes the corresponding mandatory prepayment under the Existing First Lien Credit Agreement. For the avoidance of doubt, the Applicable Prepayment Premium shall not apply to any prepayment of Term Loans made pursuant to this Section 2.11(b).

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings or its Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five (5) Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term "Prepayment Event", on the date of such Prepayment Event), prepay Initial Term Loans in an aggregate amount equal to (x) the Prepayment Percentage of the amount of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if Holdings, the Borrower or any of the Restricted Subsidiaries invest (or commit to invest) the Net Proceeds from such event (or a portion thereof) within twelve (12) months after receipt of such Net Proceeds in the business of the Borrower and the other Restricted Subsidiaries, then no prepayment shall be required pursuant to this paragraph in respect of such Net Proceeds in respect of such event (or the applicable portion of such Net Proceeds, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so invested (or committed to be invested) by the end of such 12-month period (or if committed to be so invested within such 12-month period, have not been so invested within six months following such 12-month period), at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so invested (or committed to be invested); provided, further, that the Borrower may use a portion of such Net Proceeds to prepay or repurchase any Other Term Loans, the Existing First Lien Loans or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof with the proceeds of such Prepayment Event, in each case in an amount not to exceed the product of (x) the amount of such Net Proceeds and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness.

(d) Following the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2020, the Borrower shall prepay Initial Term Loans in an aggregate amount equal to the ECF Percentage of Excess Cash Flow for such fiscal year; provided that, at the election of the Borrower, such amount shall be reduced by the aggregate amount of voluntary prepayments and repurchases of (i) Term Loans made pursuant to Section 2.11(a) or otherwise in a manner not prohibited by Section 9.04(g) during such fiscal year or after such fiscal year and prior to the time such prepayment is due (without duplication to subsequent years) as provided below (provided that such reduction as a result of prepayments pursuant to Section 2.11(a)(iii) or repurchases pursuant to Section 9.04(g) shall be limited to the actual amount of such cash prepayment or repurchase) and (ii) other Senior Secured First Lien Indebtedness (provided that (x) in the case of the prepayment of any revolving loans, there is a corresponding reduction in commitments and (y) the reduction as a result of such prepayments and repurchases shall be limited to the actual amount of such cash prepayment or repurchase) made during such fiscal year or, at

the option of the Borrower, after such fiscal year and prior to the time such prepayment is due (without duplication to subsequent years) (excluding in the case of clauses (i) and (ii) all such prepayments and repurchases funded with the proceeds of other long term Indebtedness). The Borrower may use a portion of such Excess Cash Flow prepayment to prepay or repurchase any Other Term Loans, the Existing First Lien Loans, or other Indebtedness, in each case that is secured by the Collateral on a pari passu basis with the Initial Term Loans to the extent such other Indebtedness and the Liens securing the same are permitted hereunder and the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof based on Excess Cash Flow, in each case in an amount not to exceed the product of (x) the amount of such Excess Cash Flow prepayment and (y) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness and the denominator of which is the aggregate outstanding principal amount of Initial Term Loans and such other Indebtedness. Each prepayment of Initial Term Loans pursuant to this paragraph shall be made on or before the date that is ten (10) business days after the date on which financial statements are required to be delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated. Notwithstanding anything herein to the contrary, no prepayment under this Section 2.11(d) shall be required with respect to any fiscal year to the extent Excess Cash Flow for such fiscal year is less than or equal to \$2,500,000 (and only amounts in excess of \$2,500,000 shall be required to be prepaid).

(e) Prior to any optional prepayment of Borrowings pursuant to Section 2.11(a)(i), the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section 2.11. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement or otherwise herein, in the event of any mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the Borrower shall select Term Borrowings to be prepaid so that the aggregate amount of such prepayment shall be allocated among the Classes of Term Borrowings (and, to the extent provided in the Refinancing Amendment for any Class of Other Term Loans, the Borrowings of such Class) pro rata based on the aggregate principal amount of outstanding Borrowings of each Class; provided that any Term Lender (and, to the extent provided in the Refinancing Amendment or Loan Modification Agreement for any Class of Other Term Loans, any Lender that holds Other Term Loans of such Class) may elect, by written notice to the Administrative Agent by facsimile at least two (2) Business Days prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans or Other Term Loans of any such Class pursuant to this Section 2.11 (other than an optional prepayment pursuant to paragraph (a)(i) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans or Other Term Loans of any such Class but was so declined (and not used pursuant to the immediately following sentence) shall be retained by Holdings or its Restricted Subsidiaries (such amounts, "Retained Declined Proceeds"). An amount equal to any portion of a mandatory prepayment of Term Borrowings that is declined by the Lenders under this Section 2.11(e) shall, to the extent not prohibited hereunder or under the documentation governing the Permitted First Priority Refinancing Debt or any Pari Passu Intercreditor Agreement, be applied by the Borrower to prepay, pari passu Indebtedness, Junior Financing or Permitted Junior Priority Refinancing Debt to the extent required by the documentation governing such Indebtedness or be

retained to be used for any other purposes not prohibited hereunder. Except as otherwise provided in any Refinancing Amendment, Loan Modification Agreement or otherwise herein, optional prepayments of Borrowings of Term Loans should be allocated among the Classes of Term Borrowings pro rata based on the aggregate principal amount of outstanding Borrowings of each Class. In the absence of a designation by the Borrower as described in the preceding provisions of this paragraph of the Type of Borrowing of any Class, such prepayments shall be applied on a pro rata basis to the then outstanding Term Loans being prepaid.

(f) The Borrower shall notify the Administrative Agent of (x) any optional prepayment pursuant to Section 2.11(a)(i) in writing (by facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day before the date of prepayment and (y) any mandatory prepayment pursuant to Section 2.11(c) in writing (by facsimile or other electronic communication) of any payment hereunder no later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of prepayment may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13, and subject to Section 2.11(a)(i) and Section 2.16, shall be without premium or penalty.

(g) Notwithstanding any other provisions of Section 2.11(b), (c) or (d), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event by a Subsidiary of Holdings that is organized or incorporated under the laws of a jurisdiction other than the United States, any state, commonwealth or territory thereof or the District of Columbia, giving rise to a prepayment pursuant to Section 2.11(b), (c) or (d) (a “Restricted Prepayment Event”) or Excess Cash Flow are prohibited or delayed by applicable local law (including financial assistance, corporate benefit, restrictions on repatriating or upstreaming of cash intra-group and the fiduciary and statutory duties of the directors of the relevant subsidiaries) from being repatriated to the Borrower, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(b), (c) or (d), as the case may be, and such amounts may be retained by such Subsidiary, (B) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would

have an adverse (other than de minimis) tax consequence to any Loan Party, Subsidiary or, to the extent pass-through entities, any direct or indirect equity holder thereof with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(b), (c) or (d), as the case may be, and such amounts may be retained by such Subsidiary, (C) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow would violate any material organizational document restrictions (as a result of minority ownership) and restrictions in other material agreements (to the extent not in violation of Section 6.09), the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(b), (c) or (d), as the case may be, and such amounts may be retained by such Subsidiary and (D) to the extent that and for so long as the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event or Excess Cash Flow could reasonably give rise to a risk of liability for the directors of such Subsidiary under applicable local law, the Net Proceeds or Excess Cash Flow so affected will not be required to be taken into account in determining the amount to be applied to repay Term Loans at the times provided in Section 2.11(b), (c) or (d), as the case may be, and such amounts may be retained by such Subsidiary; provided that (i) Holdings, the Borrower and each Restricted Subsidiary hereby agrees to use commercially reasonable efforts (as determined in the Borrower's reasonable business judgment) to overcome or eliminate any such restrictions on repatriation even if the Borrower does not intend to actually repatriate such cash, so that an amount equal to the full amount of such Net Proceeds will otherwise be subject to repayment under this Section 2.11, and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Restricted Prepayment Event could reasonably be expected to have adverse Tax consequences (other than de minimis consequences) for Holdings, the Borrower or any Restricted Subsidiary with respect to such Net Proceeds, an amount equal to such Net Proceeds that would be so affected will not be subject to repayment under this Section 2.11 and such amounts shall be available for general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with this Section 2.11. For the avoidance of doubt, Borrower shall be permitted to make any repayments required by Section 2.11(b), (c) or (d) from any source of funds and shall not be required to make any repayments from funds contained in any particular Loan Party. The non-application of any such prepayment amounts as a result of the foregoing provisions will not constitute a Default or Event of Default and such amounts shall be available for working capital and general corporate purposes of the Loan Parties and their Subsidiaries as long as not required to be prepaid in accordance with such provisions. Notwithstanding the foregoing, any payments actually made by the Loan Parties shall be applied net of an amount equal to the additional Taxes of Holdings, its Subsidiaries and the direct and indirect holders of Equity Interests in Holdings that would be payable or reserved against and any additional costs that would be incurred as a result of a repatriation, whether or not a repatriation actually occurs.

**SECTION 2.12 Fees.** The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times set forth in the Agent Fee Letter.

SECTION 2.13 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at (x) unless the following clause (y) applies, the Alternate Base Rate plus the Applicable Rate, payable in cash and (y) if a PIK Election has been made in accordance with Section 2.07(f) with respect to any Initial Term Loans comprising an ABR Borrowing:

(i) for any date occurring prior to the second anniversary of the Effective Date, 11.50% per annum, payable in kind, and

(ii) for any date occurring on and after the second anniversary of the Effective Date but prior to the third anniversary of the Effective Date, (A) with respect to the portion of the ABR Borrowing for which the PIK Election was made, the sum of (x) 5.00% per annum, payable in kind and (y) the Alternate Base Rate plus the Applicable Rate, payable in cash and (B) with respect to the remaining portion of the ABR Borrowing, if any, the Alternate Base Rate plus the Applicable Rate, payable in cash.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at (x) unless the following clause (y) applies, the Adjusted LIBO Rate, in each case for the Interest Period in effect for such Borrowing plus the Applicable Rate, payable in cash and (y) if a PIK Election has been made in accordance with Section 2.07(f) with respect to any Initial Term Loans comprising a Eurodollar Borrowing:

(i) for any date occurring prior to the second anniversary of the Effective Date, 11.50% per annum, payable in kind, and

(ii) for any date occurring on and after the second anniversary of the Effective Date but prior to the third anniversary of the Effective Date, (A) with respect to the portion of the Eurodollar Borrowing for which the PIK Election was made, the sum of (x) 5.00% per annum, payable in kind and (y) the Adjusted LIBO Rate, in each case for the Interest Period in effect for such Borrowing plus the Applicable Rate, payable in cash and (B) with respect to the remaining portion of the Eurodollar Borrowing, if any, the Adjusted LIBO Rate plus the Applicable Rate, payable in cash.

(c) [Reserved].

(d) Notwithstanding the foregoing, if upon the occurrence and during the continuance of any payment Event of Default, any principal or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section 2.13.



(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan, provided that (i) interest accrued pursuant to paragraph (d) of this Section 2.13 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to clause (a) of the definition of Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(g) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a) or (b) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14 have not arisen but the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor (acting reasonably) to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time and that is administratively feasible for the Administrative Agent to implement, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective upon execution thereof by the Borrower and the Administrative Agent without any further action or consent of any other party to this Agreement. Notwithstanding the foregoing, if any alternate rate of interest implemented pursuant to this Section 2.13(g) shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(h) Notwithstanding anything to the contrary in this Agreement, if any Loan would otherwise constitute an AHYDO, before the close of each accrual period ending after the fifth anniversary of the issue date of such Loan, the Borrower shall make such cash payments of accrued interest and/or principal that is the minimum amount necessary to ensure that such Loan is not treated as an AHYDO.

#### SECTION 2.14 Alternate Rate of Interest.

If at least two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans");

(c) the Administrative Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, in the event any Loans are so affected, (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, then such Borrowing shall be made as an ABR Borrowing; provided, however, that, in each case, the Borrower may revoke any Borrowing Request that is pending when such notice is received.

(d) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a) of this Section 2.14 and/or is advised by the Required Lenders of their determination in accordance with clause (b) of this Section 2.14 and the Borrower shall so request, the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend the definition of "LIBO Rate" and other applicable provisions to preserve the original intent thereof in light of such change; provided that, until so amended, such Impacted Loans will be handled as otherwise provided pursuant to the terms of Sections 2.13(g) and 2.14.

#### SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Excluded Taxes and Indemnified Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest, premium or otherwise), then, from time to time upon request of such Lender, the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender, for such increased costs actually incurred or reduction actually suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has 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 or the

Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company 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 request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction actually suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 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 this Section 2.15 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such intention to claim compensation therefor; provided, further, that, if the Change in Law 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 2.16 Break Funding Payments.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(c), then, in any such event, the Borrower shall, after receipt of a written request by any Lender affected by any such event (which request shall set forth in reasonable detail the basis for requesting such amount), compensate each Lender for the loss, cost and expense (excluding loss of profit) actually incurred by it as a result of such event. For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 2.16, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Adjusted LIBO Rate for such Loan by a matching deposit or other borrowing in the applicable interbank eurodollar market, for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 and the reasons therefor delivered to the Borrower shall be prima facie evidence of such amounts. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after receipt of such demand; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.16 for any loss, cost or expense more than 180 days prior to the date that such Lender delivers such certificate. Notwithstanding the foregoing, this Section 2.16 will not apply to losses, costs or expenses resulting from Taxes,

as to which Section 2.17 shall govern. Notwithstanding the foregoing, no Lender shall demand compensation pursuant to this Section 2.16 if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially the same manner as applied to other similarly situated borrowers under comparable credit facilities.

SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If the applicable withholding agent (including, for the avoidance of doubt, the Administrative Agent or any Loan Party) shall be required by applicable Requirements of Law (as determined in the good faith discretion of the applicable withholding agent) to deduct any Taxes from such payments, then the applicable withholding agent shall make such deductions and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law, and if such Taxes are Indemnified Taxes, then the amount payable by the applicable Loan Party shall be increased as necessary so that after all such required deductions have been made (including such deductions and withholdings applicable to additional amounts payable under this Section 2.17), each Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay, or, at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender within thirty (30) days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party under any Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, that the Borrower shall not be obligated to make payment to the Administrative Agent or a Lender, as the case may be, for penalties, interest or expenses attributable to the gross negligence or willful misconduct of the Administrative Agent or such Lender, as applicable, as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) To the extent required by any applicable Requirements of Law (as determined in good faith by the Administrative Agent), the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from

amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered 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), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Loan Parties for such Taxes pursuant to this Section 2.17 and without limiting any obligation of the Loan Parties to do so pursuant to this Section 2.17) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses, and any other out-of-pocket expenses, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 2.17(d). The agreements in this Section 2.17(d) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, any assignment of rights by a Loan Party, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations under any Loan Document.

(e) As soon as practicable after any payment of any Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Each Lender shall, at such times as are reasonably requested by Borrower or the Administrative Agent, (i) complete any documentation required for the Borrower or the Administrative Agent, as applicable, to obtain clearance to make payments under the Loan Documents without, or with a reduction in, any withholding Tax and to determine whether or not such Lender is subject to backup withholding or information reporting requirements and (ii) provide the Borrower and the Administrative Agent with any properly completed and executed documentation prescribed by any Requirement of Law, 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, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation expired, obsolete or inaccurate in any respect (including any specific documentation required below in this Section 2.17(f)), deliver promptly to Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to Tax at a rate reduced by an applicable Tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and

submission of such documentation (other than such documentation set forth in this Section 2.17(f)(i), (ii)(A) through (D), and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the generality of the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) 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 reasonable request of the Borrower or the Administrative Agent) two properly completed and duly signed copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is a 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 reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) 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, (x) two properly completed and duly signed certificates, substantially in the form of Exhibit N-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (any such certificate a "United States Tax Compliance Certificate"), and (y) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two properly completed and duly signed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit N-2 or Exhibit N-3, Internal Revenue Service Form W-9, Internal Revenue Service Form W-8IMY (or other successor

forms) and/or any other required information from each beneficial owner that would be required under this Section 2.17 if such beneficial owner were a Lender, as applicable (provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, a United States Tax Compliance Certificate substantially in the form of Exhibit N-4 may be provided by such Foreign Lender on behalf of each such direct or indirect partner), or

(E) two properly completed and duly signed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to any Lender under any Loan Document would be subject to withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding any other provision of this clause (f), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(g) If the Administrative Agent or a Lender receives a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to promptly repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. The Administrative Agent or such Lender, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (provided that the

Administrative Agent or such Lender may delete any information therein that the Administrative Agent or such Lender deems confidential). Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Notwithstanding anything to the contrary, this Section 2.17(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to Taxes which it deems confidential) to any Loan Party or any other person. Notwithstanding anything herein to the contrary, the Borrower shall not be required to compensate such Lender for any amount incurred under this Section 2.17 more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such one hundred and eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof.

(h) The agreements in this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(i) For purposes of this Section 2.17, the term “applicable Requirements of Law” includes FATCA.

**SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, premium or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) at or prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time, on the date when due), in immediately available funds, without condition or deduction for any counterclaim, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made in Dollars to such account as may be specified by the Administrative Agent. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as otherwise provided herein, if any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension.



(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest, premium and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest, premium and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, premium and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest, premium or on any of its Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans and accrued interest, premium and fees thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Term Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest, premium and fees on their respective Term Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans of that Class or any increase in the Applicable Rate or interest rate pursuant to a PIK Election in respect of Loans of Lenders that have consented to any such extension. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower's rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06(a), Section 2.18(d) or Section 9.03(c), then the Administrative Agent may, in its discretion and in the order determined by the Administrative Agent (notwithstanding any

contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

**SECTION 2.19 Mitigation Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or any event gives rise to the operation of Section 2.23, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 or mitigate the applicability of Section 2.23, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense reasonably deemed by such Lender to be material and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender.

(b) If (i) any Lender requests compensation under Section 2.15 or gives notice under Section 2.23, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority for the account of any Lender pursuant to Section 2.17 or (iii) any Lender is a Disqualified Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation); provided that (A) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consents, in each case, shall not unreasonably be withheld, conditioned or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans accrued but unpaid interest thereon, any Applicable Prepayment Premium that would be payable in the event that such Loans were prepaid on the effective date of such assignment pursuant to Section 2.11(a)(i) (unless the Lender is a Disqualified Lender in which case no Applicable Prepayment Premium shall be due notwithstanding any other provision in this Agreement to the contrary), accrued but unpaid fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of any Applicable Prepayment Premium and all other amounts), (C) the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.15, or payments required to be made pursuant to Section 2.17 or a notice given under Section 2.23, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action

taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

SECTION 2.20 [Reserved].

SECTION 2.21 Refinancing Amendments.

(a) At any time after the Effective Date, the Borrower may obtain, from any Lender or any Additional Term Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement (which for purposes of this clause will be deemed to include any then outstanding Other Term Loans), in the form of Other Term Loans or Other Term Commitments, in each case pursuant to a Refinancing Amendment; provided that such Credit Agreement Refinancing Indebtedness (i) will be unsecured or will rank pari passu or junior in right of payment and of security with the other Loans and Commitments hereunder, (ii) will have such pricing and optional prepayment terms as may be agreed by the Borrower and the Lenders thereof, and (iii) the Net Proceeds of such Credit Agreement Refinancing Indebtedness shall be applied, substantially concurrently with the incurrence thereof, to the prepayment of any outstanding Term Loans in accordance with Section 2.11(a)(i). The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of the conditions as agreed between the lenders providing such Credit Agreement Refinancing Indebtedness and the Borrower. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.21 shall be in an aggregate principal amount that is (x) not less than \$10,000,000 in the case of Other Term Loans and (y) an integral multiple of \$1,000,000 in excess thereof (in each case unless the Borrower and the Administrative Agent otherwise agree). 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 Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans and/or Other Term 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.

(b) If, in connection with any proposed Refinancing Amendment with respect to any Class of Loans, any Lender of such Class declines to provide any portion of the Credit Agreement Refinancing Indebtedness on the terms provided by the other Lenders providing such Credit Agreement Refinancing Indebtedness (each such Lender, a "Non-Refinancing Lender") then the Borrower may, on notice to the Administrative Agent and the Non-Refinancing Lender, cause such Lender to (and such Lender shall be obligated to (and to the extent such Non-Refinancing Lender does not execute such Refinancing Amendment, such Refinancing Amendment shall nonetheless be effective without such signature of the Non-Refinancing Lender)) assign and delegate, without recourse (in accordance with and subject to the restrictions contained

in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the applicable Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) in connection with such Refinancing Amendment; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) such Non-Refinancing Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the applicable Class assigned by it pursuant to this Section 2.21(b), accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.11) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (b) in connection with an assignment pursuant to clause (i), no processing and recordation fee specified in Section 9.04(b) shall be payable in connection therewith. If any applicable Lender shall be deemed a Non-Refinancing Lender and is required to assign all or any portion of its Initial Term Loans prior to the three year anniversary of the Effective Date, the Borrower shall pay such Non-Refinancing Lender the Applicable Prepayment Premium set forth in the proviso to Section 2.11(a)(i) as if such Non-Refinancing Lender's Initial Term Loans were being voluntarily prepaid on such date.

(c) This Section 2.21 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

SECTION 2.22 [Reserved].

SECTION 2.23 Illegality.

If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to the Adjusted LIBO Rate, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to Borrower through the Administrative Agent (i) any obligation of such Lender to make or continue Eurodollar Loans in the affected currency or currencies or to convert ABR Loans to Eurodollar Loans in the affected currency or currencies shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Adjusted LIBO Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate 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, (x) the Borrower shall, upon three (3) Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted LIBO Rate component of the Alternate Base Rate either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted LIBO Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Adjusted

LIBO Rate 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 Adjusted LIBO Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, and any such prepayment shall be accompanied by any Applicable Prepayment Premium that would be payable on a voluntary prepayment of the applicable Loan pursuant to Section 2.11(a)(i).

SECTION 2.24 Loan Modification Offers.

(a) At any time after the Effective Date, the Borrower may on one or more occasions, by written notice to the Administrative Agent, make one or more offers (each, a “Loan Modification Offer”) to all the Lenders of one or more Classes (each Class subject to such a Loan Modification Offer, an “Affected Class”) to effect one or more Permitted Amendments relating to such Affected Class pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower (including mechanics to permit cashless rollovers and exchanges by Lenders). Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Loans and Commitments of the Lenders of the Affected Class that accept the applicable Loan Modification Offer (such Lenders, the “Accepting Lenders”) and, in the case of any Accepting Lender, only with respect to such Lender’s Loans and Commitments of such Affected Class as to which such Lender’s acceptance has been made.

(b) A Permitted Amendment shall be effected pursuant to a Loan Modification Agreement executed and delivered by Holdings, Borrower, each applicable Accepting Lender and the Administrative Agent (provided that, if such amendment does not affect the rights, duties, privileges or obligations of the Administrative Agent, the Administrative Agent shall only be required to acknowledge such amendment). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each Loan Modification Agreement may, without the consent of any Lender other than the applicable Accepting Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to give effect to the provisions of this Section 2.24, including any amendments necessary to treat the applicable Loans and/or Commitments of the Accepting Lenders as a new “Class” of loans and/or commitments hereunder. 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.

(c) If, in connection with any proposed Loan Modification Offer, any Lender declines to consent to such Loan Modification Offer on the terms and by the deadline set forth in such Loan Modification Offer (each such Lender, a “Non-Accepting Lender”) then the Borrower may, on notice to the Administrative Agent and the Non-Accepting Lender, replace such Non-Accepting Lender in whole or in part by causing such Lender to (and such Lender shall be obligated to) assign and delegate, without recourse (in accordance with and subject to the

restrictions contained in Section 9.04) all or any part of its interests, rights and obligations under this Agreement in respect of the Loans and Commitments of the Affected Class to one or more Eligible Assignees (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that (a) the applicable assignee shall have agreed to provide Loans and/or Commitments on the terms set forth in the applicable Permitted Amendment, (b) such Non-Accepting Lender shall have received payment of an amount equal to the outstanding principal of the Loans of the Affected Class assigned by it pursuant to this Section 2.24(c), accrued interest thereon, accrued fees and all other amounts (including the Applicable Prepayment Premium that would be payable, if any, as if such assignment was a voluntary prepayment of the Loans of such Non-Accepting Lender pursuant to Section 2.11(a)(i)) payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) and (c) the processing and recordation fee specified in Section 9.04(b) shall be payable by the Borrower.

(d) Notwithstanding anything to the contrary, this Section 2.24 shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders that as of the Effective Date:

##### SECTION 3.01 Organization; Powers.

Subject to the Legal Reservations, each of Holdings, the Borrower and the Restricted Subsidiaries is (a) duly organized or incorporated, validly existing and in good standing (to the extent such concept exists in the jurisdiction of organization of such Person) under the laws of the jurisdiction of its organization or incorporation, (b) has the corporate or other organizational power and authority to carry on its business as now conducted and to execute, deliver and perform its obligations under each Loan Document to which it is a party and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the cases of clause (a) (other than with respect to the Borrower), clause (b) and clause (c), where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

##### SECTION 3.02 Authorization; Enforceability.

This Agreement has been duly authorized, executed and delivered by each of Holdings and the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to the Legal Reservations.

### SECTION 3.03 Governmental Approvals; No Conflicts.

Except as set forth on Schedule 3.03, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate (i) the Organizational Documents of, or (ii) any Requirements of Law applicable to, Holdings, the Borrower or any Restricted Subsidiary, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any Restricted Subsidiary or their respective assets (including the Existing First Lien Loan Documents), or give rise to a right thereunder to require any payment, repurchase or redemption to be made by Holdings, the Borrower or any Restricted Subsidiary, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary (other than Liens created under the Loan Documents) except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right, as the case may be, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

### SECTION 3.04 Financial Condition; No Material Adverse Effect.

(a) The Historical Audited Financial Statements and the Unaudited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the consolidated financial condition of Holdings and its Subsidiaries as of the respective dates thereof and their consolidated results of operations and cash flows for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The Pro Forma Financial Statements have been prepared in good faith, based on assumptions and adjustments believed by the Borrower to be reasonable as of the date of delivery thereof, and, to the knowledge of Holdings and the Borrower, present fairly in all material respects on a pro forma basis the estimated unaudited financial position of Holdings and its Subsidiaries as at December 31, 2019 and their estimated unaudited results of operations for the period covered thereby, subject to audit adjustments.

(c) Since the Effective Date, there has been no Material Adverse Effect.

### SECTION 3.05 Properties.

Each of Holdings, the Borrower and the Restricted Subsidiaries has good and marketable title to, or valid interests in, all its real and tangible personal property material to its business, if any (including all of the Mortgaged Properties), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in each case, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. As of the Effective Date, there is no Material Real Property.

### SECTION 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 3.06, and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has, to the knowledge of Holdings or the Borrower, become subject to any Environmental Liability or (iii) has received written notice of any claim, citation, investigation, or remedial or corrective action obligation, with respect to any Environmental Liability.

### SECTION 3.07 Compliance with Laws and Agreements.

Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance with (a) all Requirements of Law applicable to it or its property and (b) all indentures and other agreements and instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

### SECTION 3.08 Investment Company Status.

None of the Loan Parties is required to register as an “investment company” under the Investment Company Act of 1940, as amended from time to time.

### SECTION 3.09 Taxes.

Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns and reports required to have been filed and (b) have paid or caused to be paid all Taxes required to be paid, except any Taxes that are being contested in good faith by appropriate proceedings, provided that Holdings, the Borrower or Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.

### SECTION 3.10 ERISA.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan sponsored by a Loan Party is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the three



year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, and (ii) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA. There exists no Unfunded Pension Liability with respect to Plans in the aggregate (taking into account only Plans with positive Unfunded Pension Liability) except as would not be expected to have a Material Adverse Effect.

(c) Except as would not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect: (i) each employee benefit plan (as defined in Section 3(2) of ERISA) sponsored by Holdings or the Borrower that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service; (ii) to the knowledge of Holdings and the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status; and (iii) there are no pending or, to the knowledge of Holdings and the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any such plan.

#### SECTION 3.11 Disclosure.

As of the Effective Date, all written factual information and written factual data (other than projections, any pro forma financial information (including the Pro Forma Financial Statements), budgets, other forward-looking information or information consisting of statements, estimates or forecasts regarding the future condition of the industries in which the Loan Parties operate and information of a general economic or industry specific nature) made available by the Borrower or its representatives, in their official capacity as such, to the Administrative Agent or any Lender in connection with the Transactions, when taken as a whole after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not materially misleading in the light of the circumstances under which they were made; provided that, with respect to the projections of Holdings and its Subsidiaries, Holdings and the Borrower represent that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time furnished, it being understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

SECTION 3.12 Subsidiaries. As of the Effective Date, after giving effect to the Transactions to occur on the Effective Date, Schedule 3.12 sets forth the name of, and the ownership interest of each Subsidiary of Holdings.

### SECTION 3.13 Intellectual Property; Licenses, Etc.

Except as would not reasonably be expected to have a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries owns, licenses or possesses the right to use all Intellectual Property that is reasonably necessary for the operation of its business substantially as currently conducted. Neither Holdings, the Borrower nor any Restricted Subsidiary, in the operation of its business as currently conducted, is infringing upon the Intellectual Property of any Person, except for such infringements that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No claim or litigation challenging the use of any Intellectual Property by Holdings, the Borrower or any Restricted Subsidiary or the validity or enforceability of any Intellectual Property owned by Holdings, the Borrower or any Restricted Subsidiary is pending or, to the knowledge of Holdings and the Borrower, threatened in writing against Holdings, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

### SECTION 3.14 Solvency.

As of the Effective Date, immediately after, and giving Pro Forma Effect to, the consummation of each of the Transactions to occur on the Effective Date, after taking into account, and giving effect to, all applicable rights of indemnity and contribution, as of such time, (a) the sum of the debt (including contingent liabilities) of Holdings and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole; (b) the capital of Holdings and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Holdings and its Subsidiaries, taken as a whole, contemplated as of the date hereof; (c) the present fair and saleable value (on a going concern basis) of the assets of Holdings and its Subsidiaries, taken as a whole, is greater than the amount that will be required to pay the probable liabilities (including contingent liabilities) of Holdings and its Subsidiaries as they become absolute and matured in the ordinary course; and (d) Holdings and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debts as they mature in the ordinary course of business. For the purposes of this Section 3.14, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5) in the ordinary course of business.

### SECTION 3.15 Federal Reserve Regulations.

No part of the proceeds of the Loans will be used by Holdings or any Subsidiary, directly or indirectly, to purchase or carry any margin stock (within the meaning of Regulation U of the Board of Governors) or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

SECTION 3.16 USA PATRIOT Act; OFAC and Anti-Corruption.

(a) The Borrower will not, directly or, knowingly, indirectly, use the proceeds of the Loans or lend, contribute or otherwise make available such proceeds to any Person for the purpose of funding activities or business of or with any Person that, at the time of such funding, is the subject of Sanctions, or in any Sanctioned Country, in each case, in violation of Sanctions, or in any other manner that would result in a violation by any party to this Agreement of Sanctions applicable to such party. The Borrower will not use the proceeds of the Loans for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity on behalf of the government, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation in any material respect of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption law.

(b) Each of Holdings, the Borrower and the Restricted Subsidiaries is in compliance in all material respects with (i) applicable regulations and other Sanctions, (ii) Title III of the USA Patriot Act and (iii) the FCPA and any other applicable anti-corruption law.

(c) None of Holdings, the Borrower, any of the Restricted Subsidiaries, one or more individuals or entities holding 50% or more of the equity interests of Holdings, or, to the knowledge of the Borrower, any director, officer, employee or agent thereof, are individuals or entities currently on OFAC’s list of Specially Designated Nationals and Blocked Persons and/or any similar list maintained by any Sanctions Authority, or located, organized or resident in a Sanctioned Country.

(d) As of the Effective Date, the information included in the Beneficial Ownership Certification is true and correct.

SECTION 3.17 Security Documents

(a) Except as otherwise contemplated hereby or under any other Loan Documents (including, for the avoidance of doubt, the Closing Date Intercreditor Agreement), the provisions of the Security Documents and any other documents and instruments necessary to satisfy the Collateral and Guarantee Requirement, together with such timely filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to the Collateral Agent (or its agent or bailee) of any Pledged Debt (as defined in the Collateral Agreement) and any Pledged Equity (as defined in the Collateral Agreement) required to be delivered pursuant to the applicable Security Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties to the extent required hereunder or thereunder, a legal, valid, enforceable (subject to applicable Debtor Relief Laws and any other applicable bankruptcy, insolvency, reorganization, moratorium, examinership or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law) and perfected Lien with the ranking or priority required by the relevant Security Documents (subject to Liens permitted herein) on all right, title and interest of the respective Loan Parties in the Collateral described therein (other than foreign Intellectual Property).

(b) Notwithstanding anything herein (including this Section 3.17) or in any other Loan Document to the contrary, neither the Borrower nor any other 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 (other than a Foreign Subsidiary that becomes a Loan Guarantor pursuant to Section 5.13 and to the extent local law security documents are delivered pursuant to Section 5.13) or any foreign Intellectual Property, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law or (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 Requirements.

SECTION 3.18 [Reserved]

SECTION 3.19 [Reserved]

SECTION 3.20 Use of Proceeds

The Borrower has used the proceeds of the Loans issued hereunder only in compliance with (and not in contravention of) Section 5.10, applicable Requirements of Law and each Loan Document.

ARTICLE IV

CONDITIONS

SECTION 4.01 Effective Date.

The obligation of each Lender to make Loans on the Effective Date shall be subject to satisfaction of the following conditions (or waiver thereof in accordance with Section 9.02):

(a) The Administrative Agent shall have received from the Borrower and Holdings either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent, the Collateral Agent and the Lenders and dated the Effective Date) of Latham & Watkins LLP, New York and Illinois counsel for the Loan Parties.

(c) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming satisfaction of the conditions set forth in paragraphs (j), (k), (l) and (m) of this Section 4.01 and (ii) a customary certificate of each Effective Date Loan Party, dated the Effective Date, executed by any Responsible Officer of such Loan Party including or attaching only those documents referred to in paragraph (d) of this Section 4.01 and confirming that such documents are correct, complete and in full force and effect and have not been otherwise amended or superseded as of the Effective Date.

(d) The Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party relating to it, certified, to the extent applicable, by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) copies of resolutions of the Board of Directors of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by a secretary, an assistant secretary or a Responsible Officer of such Loan Party as being in full force and effect without modification or amendment and (iv) a good standing certificate (to the extent such concept exists in the jurisdiction of incorporation, organization or formation of such Loan Party) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Administrative Agent and the Initial Lenders shall have received (or shall receive substantially contemporaneously with funding on the initial Loans hereunder) (which amounts may be funded from the proceeds of the initial Loans hereunder) all fees and other amounts previously agreed in writing by the Administrative Agent or the Initial Lenders (as applicable) and the Borrower to be due and payable on or prior to the Effective Date (including reimbursement or payment of all reasonable and documented out-of-pocket expenses of (x) the Administrative Agent and (y) the Initial Lenders, taken as a whole, in each case required to be reimbursed or paid by any Loan Party under the Agent Fee Letter or any other Loan Document), in each case (other than with respect to fees included in the Commitment Letter and any administrative agent fee) to the extent invoiced at least three (3) Business Days prior to the Effective Date.

(f) The Effective Date Loan Parties shall have satisfied (i) the Collateral and Guarantee Requirement and (ii) the requirements of the second sentence of Section 5.07(a).

(g) Immediately after giving effect to the consummation of the Transactions to occur on the Effective Date, Holdings and its subsidiaries shall have no outstanding Indebtedness for borrowed money, except for (i) Indebtedness incurred pursuant to the Existing First Lien Credit Agreement, (ii) Indebtedness incurred pursuant to the Loan Documents and (iii) such other Indebtedness permitted to be outstanding under Section 6.01.

(h) The Initial Lenders shall have received the Historical Audited Financial Statements, the Unaudited Financial Statements and the Pro Forma Financial Statements.

(i) The Administrative Agent shall have received from the Existing First Lien Administrative Agent and the Effective Date Loan Parties either (i) a counterpart of the Closing Date Intercreditor Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of the Closing Date Intercreditor Agreement) that such party has signed a counterpart of the Closing Date Intercreditor Agreement.

(j) All representations and warranties made by an Effective Date Loan Party in any Loan Document shall be true and correct in all material respects on and as of the Effective Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date).

(k) No Default or Event of Default shall have occurred and be continuing on the Effective Date, immediately after giving effect to the borrowing of the Initial Term Loans on the Effective Date.

(l) All of the requirements under the Existing First Lien Credit Agreement to the execution, delivery and performance of the Loan Documents and the incurrence of the Initial Term Loans shall have been satisfied (or waived).

(m) Since December 31, 2019, no Material Adverse Effect shall have occurred with respect to Holdings and its Restricted Subsidiaries.

(n) The Administrative Agent shall have received a certificate from a Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis immediately after giving effect to the Transactions, substantially in the form of Exhibit P.

(o) The Administrative Agent and the Initial Lenders shall have received all documentation and other information about the Loan Parties as shall have been reasonably requested in writing at least ten (10) calendar days prior to the Effective Date by the Administrative Agent or the Initial Lenders that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and the Beneficial Ownership Regulation.

(p) The Existing Revolving Facility Refinancing shall have been consummated substantially concurrently with the initial funding of the Initial Term Loans.

## ARTICLE V

### AFFIRMATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Administrative Agent and the Lenders that:

#### SECTION 5.01 Financial Statements and Other Information.

Holdings or the Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) on or before the date that is one hundred (100) days after the end of each fiscal year of Holdings, commencing with the fiscal year ended December 31, 2020, audited consolidated balance sheet and audited consolidated statements of income and retained earnings and statement of cash flows of Holdings and its Subsidiaries as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year and accompanied by any final management letters, customary management discussion and analysis, all reported on by an independent public accountant of recognized national standing

(without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant (as defined in the Existing First Lien Credit Agreement)) or the impending maturity of any Indebtedness within the succeeding twelve months)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition as of the end of and for such year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ended March 31, 2020, on or before the date that is sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, unaudited consolidated balance sheet and unaudited consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and accompanied by customary management discussion and analysis, all certified by a Financial Officer as presenting fairly in all material respects the financial condition as of the end of and for such fiscal quarter and such portion of the fiscal year and results of operations and cash flows of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (a) and (b) above, the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(d) not later than five (5) days after any delivery of financial statements under paragraph (a) or (b) above, a Compliance Certificate signed by a Financial Officer (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations (A) of Consolidated EBITDA for such period with any applicable pro forma and other adjustments expressly contemplated to be included in such certificate pursuant to the other provisions of this Agreement), (B) in the case of financial statements delivered under paragraph (a) above and only to the extent the Borrower would be required to prepay Term Borrowings pursuant to Section 2.11(d), beginning with the financial statements for the fiscal year of Holdings ending December 31, 2020, of Excess Cash Flow for such fiscal year and (C) of the Available Amount then in effect.

(e) not later than one hundred (100) days after the end of each fiscal year of Holdings, commencing with the fiscal year ended December 31, 2020, a detailed consolidated budget for Holdings and its Subsidiaries for the following fiscal year (including a projected consolidated balance sheet and consolidated statements of income and retained earnings and statement of cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget); provided that the obligations of this paragraph shall be suspended upon and following the filing for an IPO; it being understood and agreed that any financial or business projections furnished by any Loan Party (i)(A) are subject to

significant uncertainties and contingencies, which may be beyond the control of the Loan Parties, (B) no assurance is given by the Loan Parties that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material and (ii) are not a guarantee of performance;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (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) filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or with any national securities exchange; and

(g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, as the Administrative Agent may reasonably request in writing, in each case subject to the limitations set forth below.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to financial information of Holdings and its Subsidiaries by furnishing (x) the applicable financial statements of any successor of Holdings, any Qualified Reporting Subsidiary or any Holdings Parent or (y) the Form 10-K or 10-Q (or the equivalent), as applicable, of Holdings (or any Holdings Parent or Qualified Reporting Subsidiary) filed with the SEC within the applicable time periods required by applicable law and regulations (including any extended deadlines available thereunder in connection with an IPO); provided that (i) to the extent such information relates to a Holdings Parent, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to Holdings and its Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 5.01(a), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of a prospective or actual default or event of default with respect to any financial covenant (including the Financial Performance Covenant (as defined in the Existing First Lien Credit Agreement)) or the impending maturity of any Indebtedness).

Documents required to be delivered pursuant to Section 5.01(a), (b) or (f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings’ or the Borrower’s website on the Internet at the website address listed on Schedule 9.01 (or otherwise notified pursuant to Section 9.01(d)); or (ii) on which such documents are posted on Holdings’ or the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings shall deliver paper copies of such documents to the Administrative Agent upon its reasonable request until a written notice to



cease delivering paper copies is given by the Administrative Agent and (ii) Holdings shall notify the Administrative Agent (by fax or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

Notwithstanding anything to the contrary herein, neither Holdings nor any Subsidiary shall be required to deliver, disclose, permit the inspection, examination or making of copies of or excerpts from, or any discussion of, any document, information, or other matter (i) that constitutes a trade secret or proprietary information or (ii) any information to the extent that the provision thereof would violate any law, rule or regulation, fiduciary duty, binding agreement, or any obligation of confidentiality binding upon, or waive any privilege of, Holdings, any Subsidiary or any of their respective Affiliates; provided, that in the event that any Loan Party does not provide information in reliance on clause (ii) of this sentence, such Loan Party shall provide notice to the Administrative Agent that such information is being withheld to the extent such Loan Party is able to do so without violating the applicable obligation or waiving privilege and such Loan Party shall use its commercially reasonable efforts to communicate the applicable information in a way that would not violate the applicable obligation or risk waiver of such privilege; provided, further, that none of the foregoing shall be construed to limit any Loan Party's representations and warranties or any of the conditions, in any such case, set forth in this Agreement.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Initial Lenders may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to the Borrower's or their Affiliates' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (x) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (y) the Administrative Agent and the Initial Lenders shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Each of Holdings and the Borrower hereby acknowledges and agrees that, unless the Borrower notifies the Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 5.01(a), (b) and (c) above are hereby deemed to be suitable for distribution, and to be made available, to all Lenders and may be treated by the Administrative Agent and the Lenders as not containing any Material Non-Public Information and all other information shall be assumed to contain Material Non-Public Information.

SECTION 5.02 Notices of Material Events.

Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

(a) the occurrence of any Default;

(b) to the extent permissible by Requirements of Law, the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings, the Borrower or any Subsidiary, affecting Holdings, the Borrower or any Subsidiary or the receipt of a written notice of an Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event or an increase in Unfunded Pension Liabilities (taking into account only Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given, in each case that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a written statement of a Responsible Officer of Holdings or the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Information Regarding Collateral.

(a) Holdings or the Borrower will furnish to the Administrative Agent promptly (and in any event within thirty (30) days after or such longer period as reasonably agreed to by the Administrative Agent) written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization or (iii) in any Loan Party's organizational identification number to the extent that such Loan Party is organized or owns Mortgaged Property in a jurisdiction where an organizational identification number is required to be included in a UCC financing statement for such jurisdiction.

(b) The Borrower shall provide in each Compliance Certificate delivered pursuant to Section 5.01(d) any changes, if any, to Schedule III to the Collateral Agreement as required to make such schedules accurate as of the last day of the fiscal quarter for which such Compliance Certificate is delivered.

SECTION 5.04 Existence; Conduct of Business.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and

effect its legal existence and the rights, licenses, permits, privileges, franchises, Intellectual Property and Governmental Approvals material to the conduct of its business, except to the extent (other than with respect to the preservation of the existence of Holdings and the Borrower) that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

#### SECTION 5.05 Payment of Taxes, etc.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, pay, discharge or otherwise satisfy all Taxes required to be paid by it, except where (a) the same are being contested in good faith by an appropriate proceeding diligently conducted by Holdings, the Borrower or any of their respective Subsidiaries or (b) the failure to make payment would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

#### SECTION 5.06 Maintenance of Properties.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition (casualty, condemnation and ordinary wear and tear excepted), except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the foregoing shall not prohibit any Disposition permitted by Section 6.05.

#### SECTION 5.07 Insurance.

(a) Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which Holdings believes (in the good faith judgment of management of Holdings) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as Holdings believes (in the good faith judgment of the management of Holdings) are reasonable and prudent in light of the size and nature of its business, and will furnish to the Lenders, upon written request from the Collateral Agent, information presented in reasonable detail as to the insurance so carried. Subject to Section 5.14, the Borrower shall, and shall cause each Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia) to (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured as its interests may appear on each such general liability policy of insurance belonging to or insuring such Restricted Subsidiary (other than directors and officers policies, workers compensation policies and business interruption insurance) and (ii) in the case of each casualty insurance policy belonging to or insuring a Restricted Subsidiary organized or existing under the laws of the United States (or any state, commonwealth or territory thereof or the District of Columbia), include a loss payable clause or mortgagee endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee or mortgagee thereunder; provided that, subject to the Closing Date Intercreditor Agreement, unless an Event of Default shall have occurred and be continuing,

(A) all proceeds from insurance policies shall be paid to Holdings, the Borrower or the applicable Restricted Subsidiary, (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by Holdings, the Borrower and/or its Subsidiaries, and (C) the Collateral Agent agrees that the Holdings, the Borrower and/or its Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(b) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with insurance companies that Holdings believes (in the good faith judgment of the management of Holdings) are financially sound and responsible at the time the relevant coverage is placed or renewed, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) furnish to the Collateral Agent information presented in reasonable detail as to the flood insurance so carried.

#### SECTION 5.08 Books and Records; Inspection and Audit Rights.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to maintain proper books of record and account in which entries that are full, true and correct in all material respects in a manner to allow financial statements to be prepared in conformity with GAAP (or applicable local standards (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder)) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or the Restricted Subsidiaries, as the case may be. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its tangible properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent, on behalf of the Lenders, may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default and such time shall be at the Borrower's expense; provided, further that (a) 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 and (b) the Administrative Agent shall give Holdings and the Borrower the opportunity to participate in any discussions with Holdings' or the Borrower's independent public accountants.

#### SECTION 5.09 Compliance with Laws.

Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, comply with all Requirements of Law (including Environmental Laws and any permit, license, or approval thereunder, the FCPA, Sanctions and the USA PATRIOT Act) with respect to it, its property and operations, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### SECTION 5.10 Use of Proceeds.

(a) The Borrower will use the proceeds of the Term Loans borrowed on the Effective Date, together with cash on hand of the Borrower, to directly or indirectly finance the Transactions, directly or indirectly pay all or a portion of the Transaction Costs, to increase cash on hand, and for other working capital purposes.

(b) The Borrower will not, directly or, to its knowledge, indirectly use the proceeds of any Loan in violation of Sanctions, the USA PATRIOT Act, the FCPA or any other applicable anti-corruption law.

#### SECTION 5.11 Additional Collateral; Additional Guarantors.

(a) If (i) any additional Restricted Subsidiary organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia), is formed or acquired after the Effective Date, (ii) any Restricted Subsidiary ceases to be an Excluded Subsidiary or (iii) the Borrower, at its option, elects to cause a Subsidiary of Holdings organized or incorporated in the United States (or any state, commonwealth or territory thereof or the District of Columbia) that is not a Wholly Owned Subsidiary (including any consolidated Affiliate in which the Borrower and their respective Subsidiaries own no Equity Interest) to become a Subsidiary Loan Party upon such election, then Holdings or the Borrower will within ninety (90) days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after (x) such newly formed or acquired Restricted Subsidiary is formed or acquired (unless such Restricted Subsidiary is an Excluded Subsidiary), (y) such Restricted Subsidiary ceases to be an Excluded Subsidiary or (z) the Borrower has made such election, cause such Restricted Subsidiary (unless such Restricted Subsidiary is an Excluded Subsidiary) to satisfy the Collateral and Guarantee Requirement with respect to such Restricted Subsidiary and with respect to any Equity Interest in or Indebtedness of such Restricted Subsidiary owned by or on behalf of any Loan Party.

(b) Notwithstanding the foregoing, in the event any real property would be required to be mortgaged pursuant to this Section 5.11, Holdings and the Borrower shall be required to comply with the “Collateral and Guarantee Requirement” as it relates to such real property within ninety (90) days following the formation or acquisition of such real property or such Restricted Subsidiary or the identification of such new Material Subsidiary, or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

#### SECTION 5.12 Further Assurances.

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to execute any and all further documents, financing statements, agreements and instruments, and take

all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) Subject, in each case, to the limitations set forth in the Security Documents and the applicable Intercreditor Agreements, if, after the Effective Date, any material assets (other than Excluded Assets), including any Material Real Property, are acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that become subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section but only as and to the extent required pursuant to the "Collateral and Guarantee Requirement", all at the expense of the Loan Parties and subject to the last paragraph in the definition of the term "Collateral and Guarantee Requirement". In the event any Material Real Property is mortgaged pursuant to this Section 5.12(b), the Borrower or such other Loan Party, as applicable, shall be required to comply with the "Collateral and Guarantee Requirement" and paragraph (a) of this Section 5.12 within ninety (90) days following the acquisition of such Material Real Property or such longer time period as agreed by the Administrative Agent in its reasonable discretion.

**SECTION 5.13 Designation of Subsidiaries.** (a) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately after such designation on a Pro Forma Basis, no Event of Default shall have occurred and be continuing, (ii) any Unrestricted Subsidiary shall also be designated an Unrestricted Subsidiary under (x) the Existing First Lien Credit Agreement and any Permitted Refinancing thereof and (y) any Junior Financing constituting Material Indebtedness, (iii) Unrestricted Subsidiaries shall not account for more than 5% of Consolidated EBITDA or 5% of total assets of Holdings and its Restricted Subsidiaries determined at the time of designation of such Unrestricted Subsidiary and (iv) no Subsidiary that owns Intellectual Property that is material to the businesses of the other Loan Parties, taken as a whole, may be designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings' or its respective subsidiaries' (as applicable) investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, of Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by Holdings in such Unrestricted Subsidiary pursuant to the preceding sentence in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings' or its Subsidiaries' (as applicable) Investment in such Subsidiary.

(b) The Borrower may at any time after the Effective Date designate any Restricted Subsidiary that is an Excluded Subsidiary as an Electing Guarantor or Electing Guarantor as an Excluded Subsidiary; provided that any Subsidiary that is designated as an “Electing Guarantor” under (and as defined in) the Existing First Lien Credit Agreement shall be substantially concurrently designated as an Electing Guarantor hereunder. Pursuant to the definition of “Electing Guarantor”, the Borrower may at its option cause any Subsidiary to, execute a supplement to each of the Guarantee Agreement and the Collateral Agreement in order to become a Loan Guarantor under the Guarantee Agreement and a grantor under such Security Documents, respectively, or, to the extent reasonably requested by the Collateral Agent, enter into an appropriate new guarantee and appropriate new Security Documents substantially consistent with the analogous existing Guarantee Agreement and Security Documents or otherwise in form and substance reasonably satisfactory to Borrower and Collateral Agent and take all other action reasonably requested by the Collateral Agent to grant a perfected (with respect to Collateral consisting of Intellectual Property, if and to the extent required under the Collateral Agreement) security interest in its assets to substantially the same extent as created by the Loan Parties and only if and to the extent required under, and in accordance with, the Security Documents. The designation of any Subsidiary as an Electing Guarantor after the Effective Date shall constitute a return on any Investment by Holdings or any Restricted Subsidiary in such Subsidiary in an amount equal to the fair market value (as determined in good faith by the Borrower) at the date of such designation of Holdings’ or its Restricted Subsidiaries’ (as applicable) Investment in such Subsidiary. The designation of any Electing Guarantor as an Excluded Subsidiary shall constitute (i) an Investment by Holdings or its Restricted Subsidiaries therein at the date of designation in an amount equal to the fair market value (as determined in good faith by the Borrower) of Holdings’ or it or its respective Restricted Subsidiaries’ (as applicable) Investment therein and (ii) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time.

SECTION 5.14 Certain Post-Closing Obligations. As promptly as practicable, and in any event within the time periods after the Effective Date specified in Schedule 5.14 or such later date as the Administrative Agent agrees in its reasonable discretion, including to reasonably accommodate circumstances unforeseen on the Effective Date, Holdings, the Borrower and each other Loan Party shall deliver the documents or take the actions specified on Schedule 5.14 that would have been required to be delivered or taken on the Effective Date, in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term “Collateral and Guarantee Requirement”.

SECTION 5.15 Maintenance of Rating of Facilities. The Loan Parties shall use commercially reasonable efforts to maintain a public corporate credit rating (but not any particular rating) from S&P and a public corporate family rating (but not any particular rating) from Moody’s, in each case in respect of the Borrower.

SECTION 5.16 Lines of Business. Holdings and its Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, corollary, synergistic, reasonably related or ancillary to any of the foregoing.

SECTION 5.17 Fiscal Periods. Holdings will keep its current fiscal year; provided, however, that Holdings may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, 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 5.18 Lender Calls. Following delivery of the financial statements pursuant to each of Sections 5.01(a) and (b), at the reasonable request of the Administrative Agent, Holdings will host a conference call, at a time selected by Holdings and reasonably acceptable to the Administrative Agent, with the Lenders to review the financial information provided, in each case, therein.

## ARTICLE VI

### NEGATIVE COVENANTS

From and after the Effective Date and until the Termination Date, each of Holdings and the Borrower covenants and agrees with the Administrative Agent and the Lenders that:

#### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Borrower and any of the Restricted Subsidiaries under the Loan Documents (including any Indebtedness incurred pursuant to Section 2.21);

(ii) Indebtedness, including intercompany Indebtedness, outstanding on the Effective Date; provided that any Indebtedness in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.01 (unless such Indebtedness is permitted by another clause in this Section 6.01), and any Permitted Refinancing thereof;

(iii) Guarantees by Holdings, the Borrower and any of the Restricted Subsidiaries in respect of Indebtedness of Holdings, the Borrower or any Restricted Subsidiary otherwise permitted hereunder; provided that (A) such Guarantee is permitted under Section 6.04 (other than Section 6.04(u)), (B) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Loan Document Obligations pursuant to the Guarantee Agreement and (C) if the Indebtedness being Guaranteed is subordinated to the Loan Document Obligations, such Guarantee shall be subordinated to the Guarantee of the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(iv) Indebtedness of (x) Holdings owing to the Borrower or any other Restricted Subsidiary, (y) the Borrower owing to Holdings or any Restricted Subsidiary or



(z) any Restricted Subsidiary owing to any other Restricted Subsidiary, Holdings or the Borrower, in each case, to the extent permitted by Section 6.04; provided that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be subordinated to the Loan Document Obligations (to the extent any such Indebtedness is outstanding at any time after the date that is thirty (30) days after the Effective Date or such later date as the Administrative Agent may reasonably agree) (but only to the extent permitted by applicable law and not giving rise to adverse tax consequences (that are not de minimis)) on terms (i) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit E or (ii) otherwise reasonably satisfactory to the Administrative Agent;

(v) (A) Indebtedness (including Capital Lease Obligations and purchase money Indebtedness) incurred, issued or assumed by Holdings, the Borrower or any Restricted Subsidiary to finance the acquisition, purchase, lease, construction, repair, replacement or improvement of fixed or capital property, equipment or other assets; provided that such Indebtedness is incurred concurrently with or within 270 days after the applicable acquisition, purchase, lease, construction, repair, replacement or improvement, and (B) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clause (A) (or successive Permitted Refinancings thereof); provided, further, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed the greater of (A) \$22,500,000 and (B) 22.5% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(vi) Indebtedness in respect of Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(vii) (a) Indebtedness (1) of any Person acquired in connection with a Permitted Acquisition or permitted Investment or secured by any assets so acquired (and not incurred by the obligor thereon in contemplation of such Permitted Acquisition or permitted Investment) and (2) of any Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary (it being acknowledged that (x) a Person that becomes a direct or indirect Restricted Subsidiary of Holdings as a result of a Permitted Acquisition or permitted Investment may remain liable with respect to Indebtedness existing on the date of such acquisition (and not incurred in contemplation thereof) and (y) an Unrestricted Subsidiary that is redesignated as a Restricted Subsidiary may remain liable with respect to Indebtedness existing on the date of such redesignation (and not incurred in contemplation thereof)); provided that at the time of incurrence, immediately after giving effect to such Permitted Acquisition, permitted Investment or redesignation, as the case may be, and the assumption of such Indebtedness, the Total Net Leverage Ratio computed on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00; and (b) in respect of the foregoing, any Permitted Refinancing thereof; provided, further, that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (vii) at the time of incurrence of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party shall not exceed, at the time of incurrence

thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(viii) Indebtedness (a) to the seller of any business or assets acquired by Holdings or any Restricted Subsidiary in a transaction permitted hereunder (including Indebtedness to finance the payment of earnout obligations owing to such seller as a result of such transaction to the extent they become a liability on the consolidated balance sheet of Holdings and its Restricted Subsidiaries in accordance with GAAP, provided that (1) the Total Net Leverage Ratio computed on a Pro Forma Basis for the most recently ended Test Period as of such time is not greater than 6.75:1.00 and (2) if the primary obligor of such earnout is a Restricted Subsidiary that is not a Loan Party, the amount of such earnout shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time) or (b) indemnification obligations, obligations in respect of purchase price adjustments, incentive non-competes and other similar contingent obligations of deferred compensation incurred or assumed in connection with any Permitted Acquisition, any other Investment or any Disposition, in each case, permitted under this Agreement;

(ix) [reserved];

(x) [reserved];

(xi) Settlement Indebtedness;

(xii) Indebtedness in respect of (a) bankers' acceptances, discounted bills of exchange or discounting or factoring of receivables for credit management purposes incurred or undertaken in the ordinary course of business on arm's length commercial terms on a non-recourse basis and (b) Cash Management Obligations and other Indebtedness in respect of netting services, automated clearinghouse arrangements, overdraft protections and similar arrangements, in each case, in connection with securities or deposit accounts or from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiii) [reserved];

(xiv) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary after the Effective Date (or of any Person not previously a Restricted Subsidiary that is merged, amalgamated or consolidated with or into Holdings, the Borrower or any Restricted Subsidiary including the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary); provided that, at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$40,000,000;

(xv) [reserved];

(xvi) [reserved];

(xvii) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary in an aggregate principal amount not greater than the Available Equity Amount that is Not Otherwise Applied at the time of incurrence;

(xviii) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case of the foregoing clauses (A) and (B), in the ordinary course of business;

(xix) Indebtedness supported by a letter of credit in a principal amount not to exceed the face amount of such letter of credit;

(xx) Indebtedness of the Borrower (and any Guarantee thereof by any Loan Party), incurred in respect of:

(A) any Existing First Lien Loans and Existing First Lien Permitted Incremental Equivalent Debt in an aggregate principal amount outstanding at any time not to exceed (x) \$623,530,000 plus (y) the aggregate principal amount of Indebtedness that would be permitted to be incurred under the “Incremental Cap” under and as defined in the Existing First Lien Credit Agreement as in effect on the date hereof and (for the avoidance of doubt) after giving effect to any such Indebtedness which has been incurred and is outstanding in reliance on such “Incremental Cap” (or, in each case, pursuant to any corresponding provision in any Permitted Refinancing thereof to the extent such corresponding provision does not permit an aggregate principal amount of Indebtedness in excess of an amount permitted under the Existing First Lien Credit Agreement (as in effect on the Effective Date)); provided that any Indebtedness incurred under this clause (A) after the date hereof shall comply with the Required Additional Debt Terms, and

(B) any Permitted Refinancing of the Indebtedness referred to in clause (A) above so long as the aggregate principal amount of Indebtedness does not exceed the aggregate principal amount of Indebtedness being refinanced, plus (1) an amount equal to unpaid accrued interest and premiums (including tender premiums) thereon, plus (2) the amount of any underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant Permitted Refinancing, plus (3) an amount equal to any existing commitments unutilized thereunder, plus (4) any additional principal amount of Indebtedness in connection with such Permitted Refinancing (without giving effect to the proviso in clause (a) of the definition thereof) to the extent such principal amount constitutes Credit Agreement Refinancing Indebtedness (as defined in the Existing First Lien Credit Agreement as in effect on the Effective Date), but only to the extent the amount of such refinancing exceeds the refinanced

Indebtedness in accordance with the Existing First Lien Credit Agreement as in effect on the Effective Date)), provided that, in the case of any Permitted Refinancing, the obligors thereon shall not include any Person that is not Holdings, the Borrower or any Subsidiary Loan Party;

(xxi) Permitted Unsecured Refinancing Debt, and any Permitted Refinancing thereof; provided that in the case of any Permitted Refinancing of any Permitted Unsecured Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party;

(xxii) Permitted First Priority Refinancing Debt and Permitted Junior Priority Refinancing Debt, and any Permitted Refinancing of any of the foregoing; provided that in the case of any Permitted Refinancing of any Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, the obligor thereon shall be the Borrower or a Subsidiary Loan Party;

(xxiii) [reserved];

(xxiv) Indebtedness of any Restricted Subsidiary that is not a Loan Party in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$20,000,000 and (B) 20% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

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

(xxvi) obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Holdings, 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 past practice;

(xxvii) Indebtedness representing deferred compensation or stock-based compensation owed to employees of Holdings, the Borrower or the Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice;

(xxviii) Indebtedness consisting of unsecured promissory notes issued by Holdings, the Borrower or any Restricted Subsidiary to future, current or former officers, directors, employees, managers and consultants or their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of Holdings (or any Holdings Parent) to the extent permitted by Section 6.07(a)(v);

(xxix) Indebtedness incurred in connection with a Qualified Securitization Facility in an aggregate amount not to exceed \$20,000,000 at any time outstanding;

(xxx) Indebtedness of any Restricted Subsidiary that is a joint venture in an amount not to exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA computed on a Pro Forma Basis for the most recently ended Test Period as of such time;

(xxxii) endorsement of instruments or other payment items for deposit in the ordinary course of business;

(xxxiii) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Restricted Subsidiaries;

(xxxiv) performance Guarantees of Holdings and the Restricted Subsidiaries primarily guaranteeing performance of contractual obligations of Holdings or Restricted Subsidiaries to a third party and not primarily for the purpose of guaranteeing payment of Indebtedness;

(xxxv) obligations in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary of Holdings to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States; and

(xxxvi) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxv) above;

provided, that any Junior Financing that is incurred pursuant to clauses (a)(i) through (a)(xxxvi) above shall not be permitted to require any cash payments of principal or interest prior to the Term Maturity Date that is in effect at the time such Indebtedness is incurred.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, issue any Disqualified Equity Interests, except (x) to the extent incurred as Indebtedness under Section 6.01(a) and (y) (i) preferred Equity Interests issued to and held by Holdings, the Borrower or any Restricted Subsidiary to the extent permitted by Section 6.04, and (ii) preferred Equity Interests issued to and held by joint venture partners after the Effective Date; provided that in the case of this clause (ii) any such issuance of preferred Equity Interests shall be deemed to have been incurred Indebtedness and subject to the provisions set forth in Section 6.01(a) and (b).

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Indebtedness described in clauses (a)(i) through (a)(xxxvi) above, the Borrower may, in its sole

discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; provided that (x) all Indebtedness outstanding under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (a)(i), (y) all Indebtedness outstanding under the Existing First Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (a)(xx)(A) and (z) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Indebtedness that was not permitted to be incurred at the initial incurrence thereof.

For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the amount of any premium paid, and fees and expenses incurred, in connection with such extension, replacement, refunding refinancing, renewal or defeasance (including any fees and original issue discount incurred in respect of such resulting Indebtedness).

Notwithstanding anything in this Section 6.01 to the contrary, after the Effective Date, Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, incur any Indebtedness that is secured by the Collateral on a *pari passu* basis with the Initial Term Loans prior to the date that the financial statements required pursuant to Section 5.01(b) have been delivered to the Administrative Agent with respect to the fiscal quarter ending on June 30, 2020.

#### SECTION 6.02 Liens.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned (but not leased) or hereafter acquired (but not leased) by it, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Encumbrances;

(iii) Liens existing on the Effective Date; provided that any Lien securing Indebtedness or other obligations in excess of \$2,500,000 individually shall only be permitted if set forth on Schedule 6.02 (unless such Lien is permitted by another clause in this Section 6.02) and any modifications, replacements, renewals or extensions thereof; provided, further, that such modified, replacement, renewal or extension Lien does not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); provided that (A) such Liens attach concurrently with or within 270 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness except for replacements, additions, accessions and improvements to such property and the proceeds and the products thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for replacements, additions, accessions and improvements to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; provided, further, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) (i) easements, leases, licenses, subleases or sublicenses granted to others (including licenses and sublicenses of Intellectual Property) in the ordinary course of business that do not (A) interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole, or (B) secure any Indebtedness and (ii) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease or license entered into by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of its business or consistent with past practice;

(vi) 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;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (B) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or (C) in favor of a banking or other financial institution or entity, or electronic payment service provider, arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking or finance industry;

(viii) Liens (A) on cash advances, cash earnest money deposits or other escrow deposits in connection with any Investment permitted pursuant to Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition), or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) Liens on property or other assets of any Restricted Subsidiary that is not a Loan Party, which Liens secure Indebtedness of such Restricted Subsidiary or another Restricted Subsidiary that is not a Loan Party, in each case permitted under Section 6.01(a) (other than with respect to Indebtedness permitted under Section 6.01(a)(iii));

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any other Restricted Subsidiary and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) Liens existing on property or other assets at the time of its acquisition or existing on the property or other assets of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the Effective Date and any modifications, replacements, renewals or extensions thereof; provided that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary and (B) such Lien does not extend to or cover any other assets or property (other than any replacements of such property or assets and additions and accessions thereto, the proceeds or products thereof and other than after-acquired property subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require or include, pursuant to their terms at such time, a pledge of after-acquired property, and proceeds or products thereof and, in the case of multiple equipment financings provided by any lender, other equipment financed by such lender);

(xii) Liens on cash, Permitted Investments or other marketable securities securing Letters of Credit issued pursuant to (and as defined in) the Existing First Lien Credit Agreement of any Loan Party that are cash collateralized on the Effective Date (as defined in the Existing First Lien Credit Agreement) in an amount of cash, cash equivalents or other marketable securities with a fair market value of up to 105% of the face amount of such Letters of Credit being secured;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term "Permitted Investments";

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower and the Restricted Subsidiaries or (B) relating to purchase orders and other agreements entered into with customers of Holdings, the Borrower or any Restricted Subsidiary in the ordinary course of business;



(xvii) ground leases in respect of real property on which facilities owned or leased by Holdings, the Borrower or any of the Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Liens on the Collateral securing Indebtedness and other obligations permitted under Section 6.01(a)(vi) solely with respect to Secured Swap Obligations (as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date), Section 6.01(a)(xii) (b) solely with respect to Secured Cash Management Obligations (as defined in the Existing First Lien Credit Agreement, as in effect on the Effective Date), Section 6.01(a)(xx) or Section 6.01(a)(xxii); provided that in all cases such Liens shall be subject to the applicable Intercreditor Agreement;

(xx) [Reserved];

(xxi) Settlement Liens;

(xxii) Liens on the Collateral securing Indebtedness permitted under Section 6.01(a)(viii) (so long as such Liens are subordinated to the Liens securing the Initial Term Loans pursuant to a Junior Intercreditor Agreement);

(xxiii) Liens on assets of any Restricted Subsidiary that is not a Loan Party (x) securing working capital lines in foreign jurisdictions and/or (y) securing other obligations, in each case, of such Restricted Subsidiary or any other Restricted Subsidiary that is not a Loan Party and to the extent such Indebtedness is permitted by Section 6.01;

(xxiv) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; provided such satisfaction or discharge is permitted hereunder;

(xxv) Receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxvi) Liens on Equity Interests of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

(xxvii) [Reserved];

(xxviii) other Liens; provided that, at the time of the granting thereof and after giving Pro Forma Effect thereto, the aggregate amount of obligations secured by all Liens incurred in reliance on this clause (xxviii) shall not exceed \$30,000,000 (provided that, with respect to any such obligation, the amount of such obligation shall be the lesser of (x) the outstanding face amount of such obligation and (y) the fair market value of the assets securing such obligation);

(xxix) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;

(xxx) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters for 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;

(xxxi) Liens of bailees arising as a matter of law or pursuant to the standard terms of agreement of such bailee in the ordinary course of business; provided that such Liens shall extend only to the assets subject to such bailment;

(xxxii) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of Holdings and its Subsidiaries;

(xxxiii) utility and similar deposits in the ordinary course of business;

(xxxiv) purchase options, call and similar rights of, and restrictions for the benefit of, a third party with respect to Equity Interests held by Holdings or any Restricted Subsidiary in joint ventures;

(xxxv) Liens in favor of Holdings or a Loan Party arising in connection with Intercompany License Agreements;

(xxxvi) Liens on cash or Permitted Investments securing any Swap Agreement (or any obligations in respect of the clearing thereof) so long as the fair market value of the assets securing such Swap Agreement does not exceed the greater of (A) \$7,500,000 and (B) 7.5% of Consolidated EBITDA for the Test Period then last ended at any time;

(xxxvii) without duplication of any other permitted Lien item under this Section 6.02, minor survey exceptions, minor encumbrances, ground leases, easements, or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines, and other similar purposes, or zoning, building codes, or other restrictions (including, without limitation, 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 a Loan Party or to the ownership of its properties which were not incurred in connection with Indebtedness for borrowed money and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Loan Party;

(xxxviii) restrictive covenants affecting the use to which real property may be put; provided that such covenants are complied with;

(xxxix) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; and

(xl) any Lien resulting from the rules and regulations of any clearing system or stock exchange over shares and/or other securities held in that clearing system or stock exchange.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxxviii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; provided that (x) all Liens created under the Loan Documents will be deemed to have been incurred in reliance only on the exception in clause (i), (y) all Liens created under the Existing First Lien Loan Documents on the Effective Date will be deemed to have been incurred in reliance only on the exception in clause (xix) and (z) no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Lien that was not permitted to be incurred at the initial incurrence thereof.

#### SECTION 6.03 Fundamental Changes; Holdings Covenant.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or liquidate or dissolve (which, for the avoidance of doubt, shall not restrict Holdings, the Borrower or any Restricted Subsidiary from changing its organizational form), except that:

(i) any Restricted Subsidiary (other than the Borrower) may merge, amalgamate or consolidate with (A) the Borrower or Holdings; provided that the Borrower or Holdings shall be the continuing or surviving Person, or (B) any one or more Restricted Subsidiaries (other than the Borrower); provided, further, that when any Subsidiary Loan Party is merging, amalgamating or consolidating with another Restricted Subsidiary (1) the continuing or surviving Person shall be a Subsidiary Loan Party or the Borrower or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is otherwise permitted under Section 6.04;

(ii) (A) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any Restricted Subsidiary that is not a Loan Party and (B) (x) any Restricted Subsidiary (other than the Borrower) may liquidate or dissolve and (y) any Restricted Subsidiary may change its legal or organizational form if, in the case of either preceding clause (x) or (y), the Borrower determines in good faith that such action is in the best interests of Holdings and its Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary (other than the Borrower) may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Holdings, the Borrower or another Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(iv) the Borrower may merge, amalgamate 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 Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower or is a Person into which the Borrower has been liquidated (or, in connection with a Disposition of all or substantially all of the Borrower's assets, if the transferee of such assets) (any such Person, the "Successor Borrower"), (1) the Successor Borrower shall be an entity organized or existing under the laws of the United States (or any state thereof), (2) the Successor Borrower shall expressly assume all of 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 and substance reasonably satisfactory to the Administrative Agent, (3) each Loan Party other than the Borrower, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Borrower's obligations under this Agreement and (4) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower stating that such merger, amalgamation or consolidation complies with this Agreement; provided, further, that (y) if such Person is not a Loan Party, no Event of Default (or, to the extent related to a Permitted Acquisition or any Investment not prohibited by Section 6.04, no Specified Event of Default) shall exist after giving effect to such merger, amalgamation or consolidation and (z) if the foregoing requirements are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents; provided, further, that (A) the Borrower shall have provided any documentation and other information about the Successor Borrower to the extent reasonably requested in writing promptly, and in any case within one (1) Business Day following the delivery of the certificate in clause (4), by any Lender through the Administrative Agent, or by the Administrative Agent, that such Lender or Administrative Agent, as applicable, shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including Title III of the USA PATRIOT Act and the Beneficial Ownership Regulation and (B) such Lender or Administrative Agent, as applicable, shall be reasonably satisfied that its review of such documentation and information requested and delivered pursuant to clause (A) complies with such applicable

“know your customer” and anti-money laundering rules and regulations (provided that for the avoidance of doubt, the Borrower’s failure to deliver information requested after the first Business Day following delivery of the certificate in clause (4) above shall not constitute a Default or an Event of Default under this Agreement or the Loan Documents);

(v) any Restricted Subsidiary (other than the Borrower) may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; provided that the continuing or surviving Person shall be the Borrower or a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12;

(vi) Holdings, the Borrower and the Restricted Subsidiaries may consummate the Transactions and any Permitted Reorganization; and

(vii) any Restricted Subsidiary (other than the Borrower) may effect a merger, amalgamation, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05.

(b) Holdings will not conduct, transact or otherwise engage in any business or operations other than (i) the ownership and/or acquisition of the Equity Interests or debt interests of the Borrower and any other Subsidiary, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters, (iv) the performance of its obligations under and in connection with (w) the Loan Documents, (x) the Existing First Lien Loan Documents, (y) any documentation governing any other Indebtedness or Guarantee permitted hereunder and (z) any Permitted Reorganization, (v) any public offering of its or any of its direct or indirect parent’s common stock or any other issuance or registration of its Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, (vi) making any dividend or distribution or other transaction similar to a Restricted Payment and not otherwise prohibited by Section 6.07, or any Investment in the Borrower or any other Person permitted under Section 6.04, (vii) the incurrence of any Indebtedness permitted under Section 6.01, (viii) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (ix) providing indemnification to officers and members of the Board of Directors, (x) activities incidental to the consummation of the Transactions and (xi) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

#### SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made and purchases of assets in the ordinary course of business consistent with past practice;

(b) loans or advances to officers, members of the Board of Directors and employees of Holdings, the Borrower and the Restricted Subsidiaries (i) for reasonable and

customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings (or any direct or indirect parent thereof) (provided that the amount of such loans and advances made in cash to such Person shall be contributed to Holdings in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii), in an aggregate principal amount outstanding at any time not to exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended;

(c) Investments by Holdings in the Borrower or any Restricted Subsidiary, Investments by the Borrower in Holdings or any Restricted Subsidiary and Investments by any Restricted Subsidiary in Holdings, the Borrower or any other Restricted Subsidiary; provided that, Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties, when taken together with any Investments made pursuant to Section 6.04(l)(y), shall not exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended in the aggregate at the time of making any such Investment;

(d) Investments consisting of extensions of trade credit and accommodation guarantees in the ordinary course of business;

(e) Investments (i) existing or contemplated on the Effective Date and set forth on Schedule 6.04 and any modification, replacement, renewal, reinvestment or extension thereof and (ii) existing on the Effective Date by Holdings, the Borrower or any Restricted Subsidiary in Holdings, the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; provided that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04 or as otherwise permitted by this Section 6.04;

(f) Investments in Swap Agreements incurred in the ordinary course of business and not for speculative purposes;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(h) Investments constituting Permitted Acquisitions, provided that the aggregate amount of any such Investment, as valued at the fair market value at the time such Investment is made, made by a Loan Party in a Restricted Subsidiary that shall not be a Loan Party (or in the case of any acquisition of assets, if such acquired assets are not owned by a Loan Party) after giving effect to such Permitted Acquisition shall not exceed the greater of (A) \$30,000,000 and (B) 30% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;

(i) the Transactions;

(j) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers in the ordinary course of business;

(k) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(l) loans and advances to any Holdings Parent (x) 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 to such Holdings Parent in accordance with Section 6.07(a) (other than Section 6.07(a)(xvii)(2)) with such Investment being treated for purposes of the applicable clauses of Section 6.07(a), including any limitations, as a Restricted Payment made pursuant to such clause, and (y) to the extent the proceeds thereof are contributed or loaned or advanced to Holdings or a Restricted Subsidiary (provided, that such contributions, loans or advances pursuant to this clause (y) to Restricted Subsidiaries that are not Loan Parties shall not, when taken together with Investments made pursuant to Section 6.04(c) in Restricted Subsidiaries that are not Loan Parties, exceed the greater of (A) \$10,000,000 and (B) 10% of Consolidated EBITDA for the Test Period then last ended in the aggregate at the time of making any such Investment);

(m) additional Investments and other acquisitions; provided that at the time any such Investment or other acquisition is made, the aggregate outstanding amount of such Investment or acquisition made in reliance on this clause (m), together with the aggregate amount of all consideration paid in connection with all other Investments and acquisitions made in reliance on this clause (m) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other Investment or acquisition previously made under this clause (m)), shall not exceed (i) \$35,000,000 plus (ii) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment, plus (iii) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Investment plus (iv) an unlimited amount so long as on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.75 to 1.00 for the most recently ended Test Period as of such time;

(n) advances of payroll payments to employees in the ordinary course of business;

(o) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests (excluding Qualified Equity Interests the proceeds of which will be applied as Cure Amounts and Qualified Equity Interests that are applied pursuant to the Available Amount or the Available Equity Amount) of Holdings or any Holdings Parent;

(p) Investments of a Subsidiary acquired after the Effective Date or of a Person merged, amalgamated or consolidated with any Subsidiary in accordance with this Section 6.04 and Section 6.03 after the Effective Date or that otherwise becomes a Subsidiary (provided that if such Investment is made under Section 6.04(h), existing Investments in subsidiaries of such Subsidiary or Person shall comply with the requirements of Section 6.04(h)) to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(q) receivables owing to Holdings, the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(r) Investments (A) for utilities, security deposits, leases and similar prepaid expenses incurred in the ordinary course of business and (B) trade accounts created, or prepaid expenses accrued, in the ordinary course of business;

(s) any Permitted Reorganization and any Investments in connection therewith;

(t) [Reserved];

(u) Investments consisting of Indebtedness, Liens, fundamental changes, Dispositions and Restricted Payments permitted (other than by reference to this Section 6.04(u)) under Sections 6.01, 6.02, 6.03, 6.05 (other than Section 6.05(e)(i)) and 6.07, respectively;

(v) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of Holdings or the Borrower;

(w) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case in the ordinary course of business;

(x) any Investment in any Restricted Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities, in each case, arising in the ordinary course of business;

(y) Investments made by an Unrestricted Subsidiary (other than Investments made with the proceeds of Investments made in reliance on Section 6.04(bb)) prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”;

(z) 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 or any repurchase obligation in connection therewith, including, without limitation, Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Facilities or any related Indebtedness;

(aa) Investments in the ordinary course of business in connection with Settlements;

(bb) Investments in any Unrestricted Subsidiaries, joint ventures and Persons which do not become Loan Parties as a result of such Investment in an amount not to exceed the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA for the Test Period then last ended at the time of making such Investment;



(cc) [reserved];

(dd) asset purchases (including purchases of inventory, supplies and materials) and the granting of non-exclusive licenses or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business;

(ee) [reserved];

(ff) Investments in connection with Intercompany License Agreements;

(gg) Investments consisting of cash earnest money deposits permitted pursuant to this Section 6.04, or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition);

(hh) to the extent that the exchange of cash by the Borrower or any other Restricted Subsidiary for the provision of services in the ordinary course of business by a Restricted Subsidiary constitutes an Investment, the payment for such provision of services or provision of such services; and

(ii) any Discounted Term Loan Prepayment or other Term Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04, any Discounted Term Loan Prepayment (as defined in the Existing First Lien Credit Agreement or other Existing First Lien Loans repurchased by Holdings or a Restricted Subsidiary pursuant to and in accordance with Section 2.11(a)(iii) or Section 9.04 of the Existing First Lien Credit Agreement, as in effect on the Effective Date (or any comparable provision of a Permitted Refinancing thereof), so long as such loans are immediately cancelled.

For the avoidance of doubt, if an Investment would be permitted under any provision of this Section 6.04 (other than Section 6.04(h)) and as a Permitted Acquisition, such Investment need not satisfy the requirements otherwise applicable to a Permitted Acquisition unless such Investments are consummated in reliance on Section 6.04(h). In addition, to the extent an Investment is permitted to be made by Holdings or a Restricted Subsidiary directly in any Restricted Subsidiary or any other Person who is not a Loan Party (each such person, a “Target Person”) under any provision of this Section 6.04, such Investment may be made by advance, contribution or distribution directly or indirectly to a Holdings Parent and further advanced or contributed substantially simultaneously by such Holdings Parent to a Loan Party or other Restricted Subsidiary for purposes of ultimately making the relevant Investment in the Target Person without constituting an Investment for purposes of Section 6.04 (it being understood that such Investment must satisfy the requirements of, and shall count toward any thresholds or baskets in, the applicable clause under Section 6.04 as if made by the applicable Restricted Subsidiary directly to the Target Person).

For purposes of determining compliance with this Section 6.04, in the event that an Investment (or any portion thereof) meets the criteria of more than one of the categories of Investments described in clauses (a) through (ii) above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or

any portion thereof) and will only be required to include the amount and type of such Investment in one or more of the above clauses; provided that no such reclassification will operate to waive any Event of Default that may have occurred with respect to any Investment that was not permitted to be made at the initial making thereof.

#### SECTION 6.05 Asset Sales.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, (i) sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors' qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or any Restricted Subsidiary in compliance with Section 6.04(c)) (each, a "Disposition" and the term "Dispose" as a verb has the corresponding meaning), except:

(a) Dispositions of obsolete, damaged, used, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful, or economically practicable or commercially desirable to maintain, in the conduct of the business of Holdings and any Restricted Subsidiary (including by ceasing to enforce or allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any Intellectual Property that is, in the reasonable judgment of Holdings, the Borrower or the Restricted Subsidiaries, no longer used or useful, or economically practicable or commercially desirable to maintain, or in respect of which Holdings, the Borrower or any Restricted Subsidiary determines in its reasonable business judgment that such action or inaction is desirable);

(b) Dispositions (including discounts) of inventory and other assets (including Settlement Assets and notes receivable) in the ordinary course of business and immaterial assets (considered in the aggregate) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property (or a functional equivalent of such property) or (ii) an amount equal to Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property (or a functional equivalent of such property);

(d) Dispositions of property to Holdings, the Borrower or any Restricted Subsidiary; provided that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for fair market value (as determined in good faith by the Borrower) and any promissory note or other non-cash consideration received in respect thereof is a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.04;

(e) To the extent constituting Dispositions, transactions permitted by (i) Section 6.03, (ii) Section 6.04 (other than Section 6.04(u)), (iii) Section 6.07 and (iv) Section 6.02;

(f) Dispositions of property acquired by Holdings, the Borrower or any of the Restricted Subsidiaries after the Effective Date pursuant to sale-leaseback transactions;

(g) Dispositions of Permitted Investments;

(h) Dispositions or forgiveness of accounts receivable in connection with the collection or compromise thereof (including sales to factors or other third parties);

(i) leases, subleases, service agreements, product sales, transfers, licenses or sublicenses (including transfers and licenses and sublicenses of Intellectual Property), in each case that do not materially interfere with the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;

(j) transfers of property subject to Casualty Events;

(k) Dispositions of property to Persons other than Restricted Subsidiaries (including the sale or issuance of Equity Interests of a Restricted Subsidiary) for fair market value (as determined by a Responsible Officer of the Borrower in good faith) not otherwise permitted under this Section 6.05 (other than a Disposition of all or substantially all assets of Holdings and the Restricted Subsidiaries); provided that (i) with respect to any Disposition pursuant to this clause (k) for a purchase price in excess of \$10,000,000, Holdings, the Borrower or such Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Permitted Investments; provided, however, that solely for the purposes of this clause (k), (A) any liabilities (as shown on the most recent balance sheet of Holdings, the Borrower or such Restricted Subsidiary or in the footnotes thereto) of Holdings, the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Loan Document Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which Holdings, the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, shall be deemed to be cash, (B) any securities, notes or other obligations or assets received by Holdings, the Borrower or such Restricted Subsidiary from such transferee that are converted by Holdings, the Borrower or such Restricted Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received) within one hundred and eighty (180) days following the closing of the applicable Disposition, shall be deemed to be cash, (C) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Disposition (other than intercompany debt owed to Holdings or its Restricted Subsidiaries), to the extent that Holdings, the Borrower and all of the Restricted Subsidiaries (to the extent previously liable thereunder) are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Disposition, shall be deemed to be cash, (D) any Designated Non-Cash Consideration received by Holdings, the Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate fair market value (as determined by a Responsible Officer of the Borrower in good faith), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (k) that is at that time outstanding, not in excess of \$15,000,000 at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value (as determined by a Responsible Officer of the Borrower in good faith) of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash and (E) consideration received in connection with an asset swap shall be deemed

“cash”, and (ii) at the time of the execution of a binding agreement in respect of and immediately after giving effect to such Disposition, no Default or Event of Default shall have occurred and be continuing;

(l) Dispositions of Investments in joint ventures or non-wholly owned Subsidiaries 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;

(m) Dispositions of any assets not constituting Collateral hereunder, provided that the aggregate fair market value (as determined in good faith by the Borrower) of all such Dispositions, in the aggregate, shall not be in excess of the greater of (A) \$15,000,000 and (B) 15% of Consolidated EBITDA at the time of such Disposition;

(n) Dispositions of any assets (including Equity Interests) (A) acquired in connection with any Permitted Acquisition or other Investment not prohibited hereunder, which assets are not used or useful to the core or principal business of Holdings, the Borrower and the Restricted Subsidiaries; provided that the fair market value of such assets shall not exceed 25% of the consideration paid in such Permitted Acquisition or Investment or (B) made to obtain the approval of any applicable antitrust authority in connection with the Transactions;

(o) (i) any Disposition of accounts receivable, Securitization Assets, any participations thereof, or related assets in connection with or any Qualified Securitization Facility or (ii) the conversion of accounts receivable to notes receivable;

(p) transfers of condemned real property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of real property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(q) Dispositions constituting any part of a Permitted Reorganization;

(r) Dispositions to Persons other than Loan Parties of Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are Permitted Investments received from Holdings or a Restricted Subsidiary) or assets acquired from Unrestricted Subsidiaries;

(s) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater fair market value of usefulness to the business of Holdings and its Restricted Subsidiaries, taken as a whole, as determined in good faith by the Borrower; provided that the aggregate fair market value (as determined in good faith by the Borrower) of all assets constituting Collateral that are exchanged for other assets not constituting Collateral pursuant to this clause (s) shall not exceed the greater of (x) \$10,000,000 and (y) 10% of Consolidated EBITDA at the time of such swap of assets;

(t) other Dispositions in an aggregate amount not in excess of the greater of (x) \$10,000,000 and (y) 11.5% of Consolidated EBITDA at the time of such Disposition;

(u) samples, including time-limited evaluation software, provided to customers or prospective customers;

(v) de minimis amounts of equipment or other assets provided to employees;

(w) the unwinding of any Cash Management Obligations or Swap Agreement pursuant to its terms;

(x) sales, transfers, leases or other dispositions to or by Holdings or a Restricted Subsidiary pursuant to Intercompany License Agreements; and

(y) Holdings and any Restricted Subsidiary may (i) terminate or otherwise collapse its cost sharing agreements with Holdings or any Restricted Subsidiary and settle any crossing payments in connection therewith, (ii) convert any intercompany Indebtedness to Equity Interests, (iii) transfer any intercompany Indebtedness to Holdings or any Restricted Subsidiary, (iv) settle, discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by Holdings or any Restricted Subsidiary, (v) settle, discount, write off, forgive or cancel any Indebtedness owing by any present or former consultants, directors, officers or employees, Holdings or any Restricted Subsidiary or any of their successors or assigns or (vi) surrender or waive contractual rights and settle or waive contractual or litigation claims.

SECTION 6.06 Material IP. All Intellectual Property that is, individually or in the aggregate, material to the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, must be owned or otherwise held by a Loan Party; provided, that if any such Intellectual Property is acquired by Holdings or any Subsidiary of Holdings pursuant to a Permitted Acquisition or other permitted Investment, the Loan Parties shall have ninety (90) days after such acquisition to comply with this Section 6.06.

SECTION 6.07 Restricted Payments; Certain Payments of Indebtedness.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, declare or make any Restricted Payment, except:

(i) the Borrower and each Restricted Subsidiary may make Restricted Payments to Holdings, the Borrower or any Restricted Subsidiary, provided that in the case of any such Restricted Payment by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, such Restricted Payment is made to Holdings, the Borrower, any Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary pro rata based on their relative ownership interests of the relevant class of Equity Interests;

(ii) Holdings, the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person;

(iii) Restricted Payments constituting any part of a Permitted Reorganization;

(iv) repurchases of Equity Interests in any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price or withholding taxes payable in connection with the exercise of such options or warrants or other incentive interests;

(v) Restricted Payments to any Holdings Parent, which such Holdings Parent may use to redeem, acquire, retire, repurchase or settle its Equity Interests (or any options, warrants, restricted stock or stock appreciation rights or similar securities issued with respect to any such Equity Interests) or Indebtedness or to service Indebtedness incurred by a Holdings Parent to finance the redemption, acquisition, retirement, repurchase or settlement of such Equity Interest or Indebtedness, held directly or indirectly by current or former officers, managers, consultants, members of the Board of Directors, employees or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement in an aggregate amount after the Effective Date together with the aggregate amount of loans and advances to any Holdings Parent made pursuant to Section 6.04(l) in lieu of Restricted Payments permitted by this clause (v) not to exceed \$10,000,000 in any fiscal year (\$20,000,000 after consummation of an IPO) with unused amounts in any fiscal year being carried over to the next succeeding calendar year (subject to a maximum of \$20,000,000 (\$50,000,000 after consummation of an IPO) in any calendar year) (without giving effect to the following proviso); provided that such amount in any fiscal year may be increased by (1) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower, Holdings (or by any Holdings Parent and contributed to Holdings) or the Restricted Subsidiaries after the Effective Date, or (2) the amount of any bona fide cash bonuses otherwise payable to members of the Board of Directors, consultants, officers, employees, managers or independent contractors of any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year; provided, further, that cancellation of Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary from members of the Board of Directors, consultants, officers, employees, managers or independent contractors (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of a Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of a Holdings Parent, Holdings or the Borrower will not be deemed to constitute a Restricted Payment for purposes of this Section 6.07 or any other provisions of this Agreement;

(vi) [Reserved];

(vii) Holdings, the Borrower or a Restricted Subsidiary may make Restricted Payments in cash or Permitted Investments to any Holdings Parent, Holdings, the Borrower or another Restricted Subsidiary, as applicable:

(A) as direct or indirect distributions by Holdings, the Borrower or any Restricted Subsidiary to the direct or indirect holders of the equity interests of Holdings, the Borrower or such Restricted Subsidiary for the purposes of (1) permitting such holders to pay such holders' respective United States federal, state or local Tax obligations with respect to the taxable income, revenue, receipts, gross receipts, gross profits, capital or margin of Holdings, the Borrower and/or its Subsidiaries that is attributed to such direct or indirect holder as a result of its ownership of such equity interests with respect to such taxable period at the maximum marginal federal, state, and local income tax rate in any jurisdiction in the United States for a taxable corporation or individual (whichever is applicable) (taking into account the deductibility of state and/or local income taxes for U.S. federal income tax purposes (and any limitations thereon), any adjustments arising by reason of an election made pursuant to Code Section 754, any cumulative net taxable loss of Holdings, the Borrower and/or its Subsidiaries for prior taxable periods to the extent such loss is of a character that would allow such loss to be available to such equity holder to reduce any taxes of such equity holder in the current taxable period, the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and the need to make such distributions on a pro rata basis) (collectively, "Tax Distributions") and (2) making "catch-up" payments on any AHYDOs;

(B) the proceeds of which shall be used by a Holdings Parent to pay (or to make Restricted Payments to allow any direct or indirect parent of such Holdings Parent to pay) (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (2) any reasonable and customary indemnification claims made by members of the Board of Directors or officers, employees, directors, managers, consultants or independent contractors of any Holdings Parent attributable to the ownership or operations of Holdings, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due and payable by Holdings, the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by Holdings, the Borrower and any Restricted Subsidiaries under this Agreement, (4) to the extent constituting a Restricted Payment, management, advisory, monitoring, consulting, refinancing, transaction, exit and/or advisory fees and expenses and similar fees and expenses (including indemnity obligations) payable to the Sponsor or any equity holder of Holdings or a Holdings Parent not to exceed \$2,5000,000 in any fiscal year and (5) to satisfy indemnity obligations under agreements in

respect of Permitted Acquisitions and (6) amounts that would otherwise be permitted to be paid pursuant to Section 6.08(iii) as it relates to this Transaction, (viii) or (xiv);

(C) the proceeds of which shall be used by a Holdings Parent, Holdings, the Borrower or a Subsidiary to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(D) to finance any Investment made by a Holdings Parent that, if made by Holdings or the Borrower, would be permitted to be made pursuant to Section 6.04; provided that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such Holdings Parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests but not including any loans or advances made pursuant to Section 6.04(b)) to be contributed to Holdings or its Restricted Subsidiaries or (2) the Person formed or acquired to merge into or amalgamate or consolidate with Holdings, the Borrower or any of the Restricted Subsidiaries to the extent such merger, amalgamation or consolidation is permitted in Section 6.03) in order to consummate such Investment, in each case in accordance with the requirements of Sections 5.11 and 5.12;

(E) the proceeds of which shall be used to pay (or to make Restricted Payments to allow a Holdings Parent to pay) fees and expenses related to any actual or proposed equity or debt offering not prohibited by this Agreement and advisory, refinancing, transaction and exit fees and expenses attributable to the business of Holdings and the Restricted Subsidiaries;

(F) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any Holdings Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of Holdings, the Borrower and the Restricted Subsidiaries; and

(G) the proceeds of which shall be used to make payments permitted by clause (b)(iv) (with such Restricted Payment being treated for purposes of such clause (b)(iv), including any limitations, as a payment made pursuant to such clause (b)(iv)) of Section 6.07;

(viii) in addition to the foregoing Restricted Payments, Holdings may make additional Restricted Payments, in an aggregate amount not to exceed the sum of (A) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment, plus (B) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such Restricted Payment; provided that any amounts included in clause (b) of the definition of "Available Amount" may only be used for Restricted Payments so long as (i) no Default shall have occurred and be continuing at the time of declaration of such Restricted Payment and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00 for the most recently ended Test Period as of such time;



(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; provided that such new Equity Interests constitute Qualified Equity Interests and contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) [Reserved];

(xi) payments to any Holdings Parent to permit it to (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) payments made or expected to be made by any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary in respect of withholding or similar Taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, manager or consultant (or their respective controlled Affiliates or permitted transferees) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants or required withholding or similar Taxes;

(xiii) the distribution, by dividend or otherwise, of shares of Equity Interests of, or Indebtedness owed to any Holdings Parent, Holdings, the Borrower or any Restricted Subsidiary by, Unrestricted Subsidiaries (other than (x) Unrestricted Subsidiaries, the primary assets of which are Permitted Investments received as Permitted Investments from Holdings or a Restricted Subsidiary and (y) distributions of Equity Interests of Unrestricted Subsidiaries to non-Loan Parties);

(xiv) so long as no Event of Default exists or would result therefrom, the declaration and payment of a Restricted Payment on Holdings' common stock (or the payment to the IPO Issuer or any Holdings Parent to fund a payment of dividends on such company's common stock), following consummation of an IPO, of up to 6.0% per annum of the net cash proceeds of such IPO received by or contributed to Holdings;

(xv) any distributions or payments of Securitization Fees, sales or contributions and other transfers of Securitization Assets and purchases of Securitization Assets, in each case in connection with a Qualified Securitization Facility;

(xvi) Restricted Payments in an amount not to exceed \$10,000,000 (or, if no PIK Election was made at any time during the most recent period of four consecutive fiscal quarters or thereafter, \$20,000,000) during the term of this Agreement so long as no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom;

(xvii) to the extent constituting Restricted Payments, Holdings, the Borrower and the Restricted Subsidiaries may consummate (1) transactions permitted pursuant to Section 6.03 and (2) make Investments permitted under Section 6.04 (other than Section 6.04(u));

(xviii) [Reserved]; and

(xix) Restricted Payments so long as (i) no Event of Default shall have occurred and be continuing at the time of declaration of such Restricted Payment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time.

Notwithstanding anything else in this Section 6.07(a), Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, declare or make any Restricted Payment, in each case, pursuant to Section 6.07(a)(viii)(A), (xiv), or (xix) unless, on a Pro Forma Basis, the Senior Secured First Lien Net Leverage Ratio is less than 5.00 to 1.00 for the most recently ended Test Period as of such time.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Junior Financing constituting Material Indebtedness (other than to the extent of any Retained Declined Proceeds applied in compliance with Section 2.11(e)), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Junior Financing, except:

(i) to the extent such payments are not prohibited by the final proviso to Section 6.01(a), payment of regularly scheduled interest and principal payments, mandatory offers to repay, repurchase or redeem, mandatory prepayments of principal premium and interest, and payment of fees, expenses and indemnification obligations, with respect to such Junior Financing, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings, supplements, substitutions, extensions, restructurings, exchanges or renewals of Junior Financing with the proceeds of any other Junior Financing to the extent permitted by Section 6.01 and fees and expenses in connection therewith;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any Holdings Parent, and any payment that is intended to prevent any Junior Financing from being treated as an AHYDO;

(iv) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity in an aggregate amount, not to exceed the sum of (A) an amount at the time of making any such prepayment,

redemption, repurchase, defeasance or other payment and together with any other prepayments, redemptions, repurchases, defeasances and other payments made utilizing this subclause (A) not to exceed \$10,000,000 (or, if no PIK Election was made at any time during the most recent period of four consecutive fiscal quarters or thereafter, \$20,000,000) plus (B) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such prepayment, redemption, repurchase, defeasance or other payment plus (C) the Available Equity Amount that is Not Otherwise Applied as in effect immediately prior to the time of making of such prepayment, redemption, repurchase, defeasance or other payment; provided that any amounts included in clause (b) of the definition of "Available Amount" may only be used for such prepayments, redemptions, repurchases, defeasances and other payments of Junior Financing so long as (i) no Default shall have occurred and be continuing at the time of making such prepayments, redemptions, repurchases, defeasances and other payments and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 6.75 to 1.00;

(v) [Reserved];

(vi) prepayments, redemptions, repurchases, defeasances and other payments in respect of Junior Financing prior to their scheduled maturity so long as (i) no Default shall have occurred and be continuing at the time of such prepayment or would result therefrom and (ii) on a Pro Forma Basis, the Total Net Leverage Ratio is no greater than 5.50 to 1.00 for the most recently ended Test Period as of such time; and

(vii) prepayment of Junior Financing owed to Holdings, the Borrower or any Restricted Subsidiary or the prepayment of Permitted Refinancing of such Indebtedness with the proceeds of any other Junior Financing permitted to be incurred hereunder.

Notwithstanding anything else in this Section 6.07(b), Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Junior Financing constituting Material Indebtedness, in each case, pursuant to Section 6.07(b)(iv)(B) or (vi) unless, on a Pro Forma Basis, the Senior Secured First Lien Net Leverage Ratio is less than 5.00 to 1.00 for the most recently ended Test Period as of such time.

(c) Any basket available for Restricted Payments pursuant to Section 6.07(a) may instead be used to make a payment or other distribution of or in respect of principal of or interest on any Junior Financing, or any payment or other distribution on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Junior Financing, pursuant to Section 6.07(b), and such payment or other distribution shall not be prohibited by Section 6.07(b). For the avoidance of doubt, any such payment or other distribution shall reduce the amount available under such basket set forth in Section 6.07(a).

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) (A) transactions between or among Holdings, the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction and (B) transactions involving aggregate payment or consideration of less than \$7,500,000, (ii) on terms, taken as a whole, substantially as favorable to Holdings, the Borrower or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (iii) the Transactions and the payment of fees and expenses as part of or in connection with the Transactions, including without limitation the Transaction Costs and transactions constituting any Permitted Reorganization, (iv) the payment of (a) transaction fees and expenses and management fees to the extent otherwise permitted hereunder and (b) indemnities to the Investors (or management companies of the Investors) to the extent such indemnities relate to the ownership and operation of Holdings and its Restricted Subsidiaries, (v) issuances of Equity Interests of Holdings to the extent otherwise permitted by this Agreement, (vi) compensation (including bonuses and securities issuances or other payments, awards, grants in cash or otherwise) and employee benefit arrangements and severance arrangements between Holdings and its Restricted Subsidiaries and their respective officers, directors, managers, consultants and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Section 6.04) or any acquisition or other Investment permitted hereunder, (vii) payments by Holdings and its Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, to the extent such payments are permitted by Section 6.07, (viii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the Board of Directors, officers and employees of Holdings (or any Holdings Parent), the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and its Restricted Subsidiaries, (ix) transactions pursuant to permitted agreements in existence or contemplated on the Effective Date and set forth on Schedule 6.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect, (x) Restricted Payments permitted under Section 6.07 and loans and advances in lieu thereof pursuant to Section 6.04(l), (xi) payments to or from, and transactions with, any joint venture in the ordinary course of business (including, without limitation, any cash management activities related thereto), (xii) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and which are fair to Holdings, the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party, (xiii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets or other customary transactions in connection with or any Qualified Securitization Facility, (xiv) customary payments by Holdings and its Restricted Subsidiaries to the Sponsor or Vista made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or financings), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (xv) the existence

and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary, and transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary and not in contemplation of such Unrestricted Subsidiary becoming redesignated as a Restricted Subsidiary, (xvi) Affiliate repurchases of the Loans and Existing First Lien Loans under the Existing First Lien Credit Agreement to the extent permitted hereunder and the holding of such Loans, Existing First Lien Loans and the payments and other transactions contemplated herein and in the Existing First Lien Credit Agreement in respect thereof, and (xvii) any transaction between or among Holdings or any Restricted Subsidiary and any non-wholly owned Affiliate of Holdings or a joint venture or similar entity that is otherwise permitted hereunder to the extent such Affiliate, joint venture or similar entity is an Affiliate solely because Holdings or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, joint venture or similar entity.

#### SECTION 6.09 Restrictive Agreements.

Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; provided that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (1) Requirements of Law, (2) any Loan Document, (3) [reserved], (4) any documentation governing Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, (5) [reserved], (6) any documentation governing Indebtedness incurred pursuant to Section 6.01(a) (v) (but only to the extent applicable to the assets financed by such Indebtedness (and replacements, additions, accessions and improvements to or proceeds of such assets and other assets financed by the same lender)), (vi), (viii), (xi), (xii), (xiv), (xvii), (xviii), (xx), (xxv), (xxvi), (xxix), (xxx), or (xxxiv), and (7) any documentation governing any Permitted Refinancing incurred to refinance any such Indebtedness referenced in clauses (1) through (6) above;

(b) customary restrictions and conditions existing on the Effective Date and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses, sublicenses and other contracts (including licenses and sublicenses of Intellectual Property) restricting the assignment, license, sublicense, transfer or security interest thereof or assets subject thereto;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to Holdings, the Borrower or any Restricted Subsidiary (other than such Person that has become a Restricted Subsidiary);

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) restrictions set forth on Schedule 6.09 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(j) customary provisions in shareholders agreements, joint venture agreements, organization constitutive documents or similar binding agreements relating to any joint venture or non-wholly-owned Restricted Subsidiary and other similar agreements applicable to joint ventures and non-wholly-owned Restricted Subsidiaries and applicable solely to such joint venture or non-wholly-owned Restricted Subsidiary and the Equity Interests issued thereby, in each case, permitted by Section 6.04;

(k) customary restrictions contained in leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto;

(l) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Holdings, the Borrower or any Restricted Subsidiary;

(m) customary net worth provisions contained in real property leases or other contracts entered into by Restricted Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of Holdings, the Borrower and its Restricted Subsidiaries to meet their ongoing obligations;

(n) [Reserved];

(o) restrictions on transfers of assets subject to Liens permitted by Section 6.02 (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(p) restrictions created in connection with any Qualified Securitization Facility;

(q) any restrictions regarding licensing or sublicensing by Holdings and its Restricted Subsidiaries of Intellectual Property in the ordinary course of business that do not interfere in any material respect with the business of Holdings and its Restricted Subsidiaries, taken as a whole;

(r) any restrictions that arise in connection with cash or other deposits permitted under Section 6.02 and Section 6.04;

(s) the Existing First Lien Loan Documents; and

(t) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Effective Date and permitted under Section 6.01 if the restrictions contained in any such agreement taken as a whole (a) are not materially less favorable to the Secured Parties than the encumbrances and restrictions contained in the Loan Documents (as determined by the Borrower) or (b) either (I) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments required hereunder or (II) such encumbrances or restriction applies only during the continuance of a default relating to such agreement or instrument.

SECTION 6.10 Amendment of Junior Financing; Modifications of Organizational Documents.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, amend or modify the documentation governing any Junior Financing (x) if such amendment is not expressly permitted by any applicable Intercreditor Agreement or subordination agreement (if any) or (y) the effect of such amendment or modification is materially adverse to the Lenders; provided that such modification will not be deemed to be materially adverse if such Junior Financing could be otherwise incurred or refinanced under this Agreement (including as Indebtedness that does not constitute a Junior Financing) with such terms as so modified at the time of such modification.

(b) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary to, terminate, amend or modify any of its Organizational Documents (including, but not limited to, changing jurisdiction of organization) in a manner that is materially adverse to the interests of the Lenders.

EVENTS OF DEFAULT

SECTION 7.01 Events of Default.

If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay (i) any interest or premium on any Loan when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days, or (ii) any fee or any other amount (other than an amount referred to in paragraph (a) or (b)(i) of this Section 7.01) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten (10) days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, the Borrower or any of its Restricted Subsidiaries in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a) or 5.04 (with respect to the existence of Holdings or the Borrower only) or in Article VI; provided that any Event of Default under Section 5.02(a) shall be deemed cured upon Borrower providing the applicable written notice;

(e) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrower;

(f) Holdings, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period and all required notices have been given); provided that this paragraph (f) shall not apply to any Indebtedness if the sole remedy of the holder thereof in the event of such non-payment is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares; provided that this paragraph (f) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01;



(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired and all required notices have been given) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this paragraph (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement), (ii) termination events or similar events occurring under any Swap Agreement that constitutes Material Indebtedness (it being understood that paragraph (f) of this Section 7.01 will apply to any failure to make any payment required as a result of any such termination or similar event) or (iii) any Indebtedness if the sole remedy of the holder thereof following such event or condition is to elect to convert such Indebtedness into Qualified Equity Interests and cash in lieu of fractional shares, provided that this paragraph (g) shall not apply to any such failure that (x) is remedied by Holdings, the Borrower or any applicable Restricted Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Material Indebtedness in either case, prior to acceleration of all the Loans pursuant to this Section 7.01.

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, court protection, examination, reorganization or other relief in respect of Holdings, the Borrower or any Material Subsidiary or its debts, or of a material part of its assets, under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, examiner, sequestrator, conservator, interim receiver, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets, and, in any such case, such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Holdings, the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, court protection, examinership, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law, now or hereafter in effect (but excluding any such proceeding or petition (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator, interim receiver, interim examiner, liquidator, receiver and manager, administrative receiver, administrator, insolvency practitioner or similar official for Holdings, the Borrower or any Material Subsidiary or for a material part of its assets (but excluding any such application or consent (other than under the Bankruptcy Code) the sole purpose of which is to effect a transaction permitted under Section 6.03(a) that is not otherwise prohibited by the Loan Documents), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors;

(j) one or more enforceable judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (to the extent not covered by insurance or another creditworthy (as reasonably determined by the Administrative Agent) indemnitor, and as to which such insurer or indemnitor has not denied coverage) shall be rendered against Holdings, the Borrower, any Material Subsidiary or any combination thereof and the same shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) consecutive days;

(k) an ERISA Event occurs that has resulted or would reasonably be expected, individually or together with any other ERISA Event(s) in the aggregate to result in a Material Adverse Effect;

(l) there shall cease to be, or shall be asserted by any Loan Party not to be (other than in an informational notice), a valid and perfected (if and to the extent required to be perfected under the Loan Documents) Lien on any material portion of the Collateral, with the priority required by the applicable Security Documents, except (i) as a result of the release of a Loan Party (including as a result of the designation of a Restricted Subsidiary as an Unrestricted Subsidiary) or the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) as a result of (A) the Collateral Agent's failure to, subject to the Closing Date Intercreditor Agreement, maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security Documents or (B) the Lenders' failure to file Uniform Commercial Code amendment or continuation financing statements or (iii) 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 (iv) as a result of acts or omissions of the Collateral Agent, the Administrative Agent or any Lender;

(m) any material provision of any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any material portion of the Guarantees of the Loan Document Obligations pursuant to the Guarantee Agreement, taken as a whole, shall cease to be in full force and effect (in each case, other than the occurrence of the Termination Date or otherwise in accordance with the terms of the Loan Documents including as a result of transactions permitted hereunder); or

(o) a Change in Control shall occur;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent at the request of the Required Lenders (provided that the following actions may not be taken, in the case of an Event of Default under Section 7.01(d), if the express conditions in the last proviso contained in Section 7.01(d) have been satisfied) shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable,

together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, as well as the Applicable Prepayment Premium in accordance with the final sentence of this paragraph, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, as well as the Applicable Prepayment Premium in accordance with the final sentence of this paragraph, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. For the avoidance of doubt, it is understood and agreed that each payment of the Loans following an acceleration of all or any portion of the Loan Document Obligations pursuant to this paragraph, or upon the occurrence of any Event of Default under paragraph (h) and (i) of this Section 7.01, in each case, shall be accompanied by a cash payment equal to, if such acceleration occurs prior to the date that is three years after the Effective Date, the prepayment premium that would otherwise apply in the case of a prepayment on such date pursuant to Section 2.11(a)(i).

SECTION 7.02 [Reserved].

SECTION 7.03 Application of Proceeds. Subject to the terms of the Closing Date Intercreditor Agreement and any other applicable Intercreditor Agreement, the Collateral Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Agents in connection with such collection or sale or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all fees, indemnities and other amounts payable to the Agents in connection with the Loan Documents or any of the Secured Obligations and all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Agents hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Secured Obligations that constitute Senior Secured First Lien Indebtedness (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of such Secured Obligations owed to them on the date of any such distribution); provided that such payment shall be applied (w).first, to the portion of such Secured Obligations constituting accrued and unpaid fees, indemnities and other amounts (other than principal, interest and premium) payable to the Lenders in respect of the Loans, (x).second, to the portion of such Secured Obligations constituting such accrued and unpaid interest and premium in respect of the Loans, (y).third, to all other Secured Obligations;

THIRD, to any agent of any junior secured debt, in accordance with any applicable Intercreditor Agreement; and

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof. The Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations.

## ARTICLE VIII

### ADMINISTRATIVE AGENT

#### SECTION 8.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Wilmington Trust, National Association (and any permitted successor or permitted assign thereof) to act on its behalf as the Administrative Agent and Collateral 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 and Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 8.06) are solely for the benefit of the Administrative Agent and the Collateral Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. The Administrative Agent may perform any of its respective duties hereunder by or through its officers, directors, agents, employees or affiliates.

(b) The Administrative Agent shall also act as the “Collateral Agent” or, as the case may be, “Security Trustee” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent or, as the case may be, the security trustee, of such Lender, and acknowledges that, to the extent required in any relevant jurisdiction, the Administrative Agent may enter into such security trust or equivalent deeds as the Administrative Agent may consider necessary, in each case 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 Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent and Collateral Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security 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 VIII and Article IX (including Section 9.03 as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” or the “security agent” or the “security trustee” under the Loan Documents) as if set forth in full herein with respect thereto.

## SECTION 8.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, 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 of the Borrower as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

## SECTION 8.03 Exculpatory Provisions.

The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law;

(c) 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 their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not 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 Section 9.02 and in the last paragraph of Section 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment; provided that the Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the Administrative Agent by the Borrower or a Lender;

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered

hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security 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;

(f) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the Disqualified Lenders List or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Lenders. 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 Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender;

(g) shall not be responsible for (i) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, the Security Documents, any other Loan Document or any agreement or instrument contemplated hereby or thereby, (ii) the filing, re-filing, recording, re-recording or continuing or any document, financing statement, mortgage, assignment, notice, instrument of further assurance or other instrument in any public office at any time or times or (iii) providing, maintaining, monitoring or preserving insurance on or the payment of taxes with respect to any of the Collateral. The actions described in items (i) through (iii) shall be the sole responsibility of the Lenders;

(h) shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or the other Loan Documents arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; pandemics, riots; business interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action;

(i) shall not be (i) required to qualify in any jurisdiction in which it is not presently qualified to perform its obligations as such Agent or (ii) required to take any enforcement action against a Loan Party or any other obligor outside of the United States;

(j) shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Agreement and any other Loan Document to which Agent is a party, whether or not an original or a copy of such agreement has been provided to the Administrative Agent; and

(k) shall not be responsible for nor have any duty to monitor the performance or any action of the Loan Parties, the Lenders, or any of their directors, members, officers, agents, affiliates or employee, nor shall they have any liability in connection with the malfeasance or nonfeasance by such party; the Agents may assume performance by all such Persons of their respective obligations.

Nothing in this Agreement shall require the Agents to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to any anti-terrorism law, including any programs involving any of the following items relating to or in connection with the Loan Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under any anti-terrorism law.

#### SECTION 8.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. 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 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. The Administrative Agent may rely on the Register and deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent.

#### SECTION 8.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents (which may include such of the Administrative Agent's affiliates or branches as it deems appropriate) appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the credit facilities provided for

herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub agents, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

#### SECTION 8.06 Resignation of Administrative Agent.

The Administrative Agent may resign upon thirty (30) days' notice to the Lenders (unless such notice is waived by the Required Lenders) and the Borrower (unless an Event of Default exists under 7.01(h) or 7.01(i) or unless such notice is waived by the Borrower). Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (such consent not to be unreasonably withheld or delayed) unless a Specified Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank or trust company with an office in the United States, or an Affiliate of any such bank or trust company with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then such resignation shall nonetheless become effective in accordance with such notice and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section (the "Resignation Effective Date").

In addition, the Required Lenders and Holdings may, to the extent permitted by applicable law, by notice in writing to the Administrative Agent remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) 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 or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents



as set forth in this Section. 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 or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

**SECTION 8.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption or Refinancing Amendment pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent and Collateral Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent or Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent or Collateral Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent or Collateral Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

#### SECTION 8.08 No Other Duties, Etc.

The Administrative Agent may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents the Administrative Agent is permitted or desires to take or to grant. The Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval (including such actions or approvals with respect to which the Administrative Agent is required to act reasonably) and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Person shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders and, notwithstanding the instructions of the Required Lenders, the Administrative Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes the Administrative Agent to any liability for which it is not entitled to satisfactory reimbursement and indemnification in accordance with the provisions of Section 9.03.

#### SECTION 8.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any 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, premium and interest owing and unpaid in respect of the Loans and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.12 and 9.03) 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, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03.

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 Secured Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

**SECTION 8.10 No Waiver; Cumulative Remedies; Enforcement.**

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 Article VII 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 Lender from exercising setoff rights in accordance with Section 9.08 (subject to the terms of Section 2.18), 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 Article VII and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.18, 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 8.11 Status of Administrative Agent.**

On or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement, the Administrative Agent shall deliver to the Borrower (i) if the Administrative Agent is a United States person (as defined in Section 7701(a)(30) of the Code), an executed copy of Internal Revenue Service Form W-9, or (ii) if the Administrative Agent is not a United States person (as defined in Section 7701(a)(30) of the Code), (A) an executed applicable Internal Revenue Service Form W-8ECI with respect to amounts received on its own account and (B) an executed Internal Revenue Service Form W-8IMY evidencing its agreement with the Borrower to be treated as a United States person (as defined in Section 7701(a)(30) of the Code) as set forth in U.S. Treasury Regulation Section 1.1441-1(b)(2)(iv), for the purpose of permitting the Borrower to make payments to such Administrative Agent without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent shall deliver such documentation on or before any date on which such documentation expires or becomes obsolete or invalid, after the occurrence of any change in the

Administrative Agent's circumstances requiring a change in the most recent documentation previously delivered by it to the Borrower, and from time to time thereafter if reasonably requested by the Borrower, and shall promptly notify the Borrower in writing if it is no longer legally eligible to provide any documentation previously provided.

SECTION 8.12 Interpretation. Any reference in a Loan Document to any Agent providing approval or consent or making a request or direction or determination, or to an item or a person being reasonably acceptable to, satisfactory to or approved by or specified by any Agent, or requiring certain steps or actions to be taken, or any Agent exercising its discretion to permit or waive any action, or any Agent disagreeing with any calculation, are to be construed, unless otherwise specified, as references to such Agent taking such action or refraining from acting on the instructions of the Required Lenders or Lenders, as applicable, and where such Agent is referred to in a Loan Document as acting "reasonably" or in a "reasonable" manner or as coming to an opinion or determination that is "reasonable" (or any similar or analogous wording is used), unless it is not required to do so, this shall mean that such Agent shall, where it has in fact sought such instructions, be acting or coming to an opinion or determination on the instructions of the Required Lenders or Lenders, as applicable, acting reasonably (and each Lender hereby agrees to act reasonably in all such instances) and such Agent shall be under no obligation to determine the reasonableness of such instructions from the Required Lenders or Lenders, as applicable, or whether in giving such instructions the Required Lenders or Lenders, as applicable are acting in a reasonable manner.

SECTION 8.13 Survival. This Article VIII shall survive the termination of this Agreement, the repayment, satisfaction or discharge of all Secured Obligations and the resignation, removal or replacement of the Administrative Agent.

## ARTICLE IX

### MISCELLANEOUS

#### SECTION 9.01 Notices.

(a) All notices and other communications provided for herein shall be in writing and shall be delivered by overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission (including e-mail), as follows:

(i) if to Holdings, the Borrower, or the Administrative Agent, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 9.01; and

(ii) if to any Lender, to it at its address (or fax number, telephone number or e-mail address) set forth in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain Material Non-Public Information relating to the Borrower).

Notices and other communications sent by 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 fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures reasonably 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.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received when sent to the proper e-mail address as specified on Schedule 9.01 (as updated from time to time in accordance with Section 9.01(d)), 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 Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received when an e-mail is sent to 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.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to 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 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).

(d) Change of Address, Etc. Each of Holdings, the Borrower and the Administrative Agent may change its address, electronic mail address, fax or telephone number

for notices and other communications or website hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by 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, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the 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. 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 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power under this Agreement or any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.21 with respect to any Refinancing Amendment or Section 2.24 with respect to any Permitted Amendment, neither this Agreement, any Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent and the Required Lenders (provided, that if such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall only be required to acknowledge such waiver, amendment or modification) or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that, to the extent not otherwise specified, the consent of the Required Lenders shall not be required with respect to the amendments set forth

below; provided, further, that no such agreement shall (i) increase the Commitment of any Lender without the written consent of (x) the Required Lenders and (y) such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness of principal) or reduce the rate of interest thereon (or allow for the payment of interest in kind, other than pursuant to a PIK Election, as in effect on the Effective Date), or reduce any fees or premiums payable hereunder, without the written consent of each Lender directly and adversely affected thereby, provided that only the consent of the Required Lenders shall be necessary to waive or otherwise modify any obligation of the Borrower to pay default interest pursuant to Section 2.13(d), (iii) postpone the maturity of any Loan (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or any date for the payment of any interest, premium or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby, (iv) change Section 2.18(b), Section 2.18(c) or Section 7.03 in a manner that would alter the pro rata sharing of payments or other amounts required thereby without the consent of each Lender directly and adversely affected thereby (provided, that any such changes required in connection with any Refinancing Amendment or other transaction expressly permitted hereunder shall only require the approval (to the extent any approval is required) of the Required Lenders so long as the Administrative Agent is notified of such amendment), (v) change any of the provisions of this Section 9.02(b) without the written consent of each Lender, (vi) change the definition of "Required Lenders" or any other any provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vii) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender or (viii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender, except as expressly provided in the Loan Documents; provided, further, that in connection with an amendment that addresses solely a repricing transaction in which any Class of Term Loans is refinanced with a replacement Class of term loans bearing a lower yield and which otherwise satisfy the requirements of Credit Agreement Refinancing Indebtedness, only the consent of the Lenders holding Term Loans subject to such permitted repricing transaction that will continue as a Lender in respect of the repriced tranche of Term Loans or modified Term Loans shall be required); provided, further, that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent, (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any mistake, ambiguity, omission, defect, obvious error or incorrect cross-reference, or to effect administrative changes of a technical or immaterial nature or to correct any inconsistency and (C) 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 Holdings, the Borrower and the requisite percentage in interest of the affected Class of Lenders stating that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings 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 and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion and (b) guarantees, Security Documents and related documents in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement and the other Loan Documents, 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, (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents or (iv) to integrate any Credit Agreement Refinancing Indebtedness in a manner consistent with this Agreement and the other Loan Documents. Notwithstanding the foregoing, no Lender consent is required to effect any amendment, modification or supplement to any subordination agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral, including any Other Term Loan, for the purpose of adding the holders of such Indebtedness (or their Senior Representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto, to give effect hereto or otherwise carry out the purposes thereof, in each case as contemplated by the terms of such Intercreditor Agreement permitted under this Agreement (including any changes thereto as contemplated by Section 9.14(b)) or subordination agreement or arrangement permitted under this Agreement, as applicable.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section 9.02 being referred to as a “Non-Consenting Lender”), then the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, (i) require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment) or (ii) prepay the Loans of such Non-Consenting Lenders; provided that (a) in the case of the preceding clause (i), the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding par principal amount of its



Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (including pursuant to Section 2.11(a)(i)) from (x) in the case of preceding clause (i), the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (y) in the case of preceding clause (ii), from the Borrower, and (c) in the case of preceding clause (i), unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b). If any applicable Lender shall be deemed a Non-Consenting Lender and is required to assign all or any portion of its Initial Term Loans or its Initial Term Loans are prepaid by the Borrower pursuant to this Section 9.02(c) on or prior to the third anniversary of the Effective Date, the Borrower shall pay such Non-Consenting Lender of the Applicable Prepayment Premium with respect to the principal amount of the Initial Term Loans so assigned or prepaid.

(d) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender (other than an Affiliated Debt Fund) hereby agrees that, for purposes of any plan of reorganization, such Affiliated Lender will be deemed to have voted in the same proportion as non-Affiliated Lenders voting on such matter; provided that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion in connection with any plan of reorganization to the extent (a) any such plan of reorganization proposes to treat any Secured Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Secured Obligations held by Lenders that are not Affiliates of the Borrower, (b) that would deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled or (c) if such plan of reorganization does not require the consent of each Lender or each affected Lender.

#### SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay, whether or not the Effective Date occurs and the Transactions have been consummated, (i) all reasonable and documented out-of-pocket costs and expenses incurred by the Agents, the Initial Lenders and their respective Affiliates (without duplication), (but limited, (A) in the case of legal fees and expenses, to the reasonable, documented, out-of-pocket fees, disbursements and other charges of (x) one counsel to the Initial Lenders, taken as a whole, (y) one counsel to the Agents, taken as a whole, and (z) if reasonably necessary, one regulatory counsel and one local counsel to each of (I) the Agents, taken as a whole, and (II) the Initial Lenders, taken as a whole, in any relevant material jurisdiction, in each case excluding allocated costs of in-house counsel (and in the case of an actual or potential conflict of interest, one additional counsel and local counsel to the affected Lenders, taken as a whole) and (B) in the case of other consultants and advisors, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed), in each case for each of (x) the Initial Lenders, taken as a whole and (y) the Agents, taken as a whole, in connection with the preparation, execution, delivery and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof) and (ii) all reasonable and documented and invoiced out-of-pocket expenses incurred by each of (x) the Agents and (y) the Lenders (but limited, (A) in the case of legal fees and expenses, to the reasonable, documented, out-of-pocket fees, disbursements and other charges of (x) one counsel to the Agents, taken as a whole, (y) one counsel to the Lenders, taken as a whole, and, (z) if reasonably necessary, one local counsel and one regulatory counsel to each of (I) the Agents, taken as a whole, and (II) the Lenders,

taken as a whole, in any relevant material jurisdiction, in each case excluding allocated costs of in-house counsel (and in the case of an actual or potential conflict of interest, one additional counsel and local counsel to the affected Lenders, taken as a whole) and (B) in the case of other consultants and advisers, limited to the fees and expenses of such persons approved by the Borrower, such approval not to be unreasonably withheld or delayed) in connection with the enforcement or protection of any rights or remedies in connection with the Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Laws or during any workout, restructuring or negotiations in respect of such Loans).

(b) Without duplication of the expense reimbursement obligations pursuant to clause (a) above, the Borrower shall indemnify the Agents, each Lender and each Related Party (other than Excluded Affiliates) of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (but limited, in the case of legal expenses, to the reasonable and documented and invoiced out-of-pocket fees and expenses of one counsel for each of (x) the Agents and their Related Parties, taken as a whole, and (y) all other Indemnities, taken as a whole, and to the extent reasonably determined by any such Indemnities to be necessary, one regulatory counsel and one local counsel in each relevant jurisdiction (and, in the case of an actual or potential conflict of interest, one additional counsel) for each of (x) the Administrative Agent and (y) all other Indemnities, taken as a whole, (which may include a single special counsel acting in multiple jurisdictions but excluding allocated costs of in-house counsel)), incurred by or asserted against any Indemnitee by any third party or by the Borrower, Holdings or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any Loan Document or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, the credit facilities provided for herein, (ii) any actual or alleged presence or Release or threat of Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other real property currently owned or operated by Holdings, the Borrower or any Subsidiary, or any other Environmental Liability related in any way to Holdings, the Borrower or any Subsidiary, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, Holdings or any Subsidiary or their Affiliates and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, costs or related expenses (w) resulted from the gross negligence or willful misconduct of such Indemnitee or its controlled Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (x) other than with respect to the Agents and their Related Parties, resulted from a material breach of the Loan Documents by such Indemnitee or its Related Parties (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) arise from disputes between or among Indemnities (other than disputes involving claims against the Administrative Agent or the Collateral Agent, in each case, in their respective capacities) that do not involve an act or omission by the Sponsor, Holdings, the Borrower or any Restricted Subsidiary or (z) resulted from any settlement effected without the Borrower’s prior written consent (which consent shall not be unreasonably withheld or delayed); provided that, to the extent any amounts paid to an Indemnitee

in respect of this Section 9.03, such Indemnitee, by its acceptance of the benefits hereof, agrees to refund and return any and all amounts paid by the Borrower to it if, pursuant to the operation of the foregoing clauses (w) through (z), such Indemnitee was not entitled to receipt of such amount. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Agents or any Lender under paragraph (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Administrative Agent or such Lender, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents or such Lender in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the outstanding Term Loans and unused Commitments at such time. The obligations of the Lenders under this paragraph (c) are subject to the last sentence of Section 2.02(a) (which shall apply *mutatis mutandis* to the Lenders' obligations under this paragraph (c)).

(d) To the extent permitted by applicable law, none of Holdings, the Borrower, any Agent, any Lender, any other party hereto or any Indemnitee shall assert, and each hereby waives, any claim against any other such Person on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby or referred to herein, the transactions contemplated hereby or thereby, or any act or omission or event occurring in connection therewith and each such Person further agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that the foregoing shall in no event limit the Borrower's indemnification obligations under clause (b) above.

(e) In case any proceeding is instituted involving any Indemnitee for which indemnification is to be sought hereunder by such Indemnitee, then such Indemnitee will promptly notify the Borrower of the commencement of any proceeding; provided, however, that the failure to do so will not relieve the Borrower from any liability that it may have to such Indemnitee hereunder except to the extent that the Borrower is materially prejudiced by such failure. Notwithstanding the above, following such notification, the Borrower may elect in writing to assume the defense of such proceeding, and, upon such election, the Borrower will not be liable for any legal costs subsequently incurred by such Indemnitee (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) the Borrower has failed to provide counsel reasonably satisfactory to such Indemnitee in a timely manner, (ii) counsel provided by the Borrower reasonably determines its representation of such Indemnitee would present it with a conflict of interest or (iii) the Indemnitee reasonably determines that there are actual conflicts of interest between the Borrower and the Indemnitee, including situations in which there may be legal defenses available to the Indemnitee which are different from or in addition to those available to the Borrower.

(f) Notwithstanding anything to the contrary in this Agreement, the extent permitted by applicable law, neither Holdings nor the Borrower shall assert, and each hereby waives, any claim against any Indemnatee for any direct or actual damages arising from the use by unintended recipients of information or other materials distributed to such unintended recipients by such Indemnatee through telecommunications, electronic or other information transmission systems (including the Internet) in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby; except to the extent that such direct or actual damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of, or, with respect to any Indemnatee other than the Agents and their Related Parties, a material breach of the Loan Documents by, such Indemnatee or its Related Parties.

(g) All amounts due under this Section 9.03 shall be payable not later than twenty (20) Business Days after written demand therefor; provided, however, that any Indemnatee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnatee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (other than to a Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) without the prior written consent of each Lender and the acknowledgement of the Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent (other than to a Successor Borrower pursuant to a transaction permitted by Section 6.03(a)(iv)(B)) shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 paragraph (c) of this Section 9.04), the Indemnitees and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraphs (b)(ii) and (f) below, any Lender may assign to one or more Eligible 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) with the prior written consent (such consent not to be unreasonably withheld or delayed) of (A) the Borrower; provided that no consent of the Borrower shall be required for an assignment (x) by a Term Lender to any Lender, an Affiliate of any Lender or an Approved Fund or (y) if a Specified Event of Default has occurred and is continuing; provided, further, that no assignee contemplated by the immediately preceding proviso shall be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable assignor would have been entitled to receive with respect to the assignment made to such assignee, unless the assignment to such assignee is made with the Borrower's prior written consent; provided, further, that the Borrower shall have the right to withhold its consent to any assignment if in order for such

assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority and (B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of Term Loans subject to Section 9.04(f) and (g), to an Affiliated Lender, Holdings, the Borrower or any of its Subsidiaries; provided, further, that no consent of the Administrative Agent shall be required for an assignment of Term Loans to a Lender or by a Lender to an Affiliate of any Lender or an Approved Fund. Notwithstanding anything in this Section 9.04 to the contrary, if the Borrower has not given the Administrative Agent written notice of its objection to an assignment of Term Loans within ten (10) Business Days after written notice of such assignment, the Borrower shall be deemed to have consented to such assignment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (and integral multiples thereof), unless the Borrower and the Administrative Agent otherwise consent (in each case, such consent not to be unreasonably withheld or delayed); provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) 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 execute and deliver to the Administrative Agent an Assignment and Assumption, and, in each case, together with a processing and recordation fee of \$3,500 payable by the assignee; provided that such processing and recordation fee shall not be payable in connection with an assignment by a Lender to one of its (i) Affiliates or (ii) Approved Funds that is under common control with such Lender; provided, further, that the Administrative Agent, in its sole discretion, may elect to waive or reduce such processing and recordation fee; provided, further, that any such Assignment and Assumption shall include a representation by the assignee that the assignee is not a Disqualified Lender (but only if the Disqualified Lenders List is available to such assignee and Lenders upon request); provided, further, that assignments made pursuant to Section 2.19(b), 2.21(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective and (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent any tax forms required by Section 2.17(f) and an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain Material Non-Public Information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 paragraph (c)(i) of this Section 9.04 to the extent otherwise permitted thereby or otherwise shall be void.

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and interest amounts of the Loans (including details of all PIK Elections) owing to each Lender pursuant to the terms hereof from time to time (the "Register"). 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 held by Affiliated Lenders. The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Register is intended to cause each Loan to be in registered form for U.S. federal income tax purposes under Section 5f.103-1(c) of the U.S. Treasury Regulations and Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(f) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.04 and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words “execution”, “signed”, “signature” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as an original executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other Persons (other than to a Disqualified Lender (but only if the Disqualified Lenders List is available to Lenders upon request) or other Person that is not an Eligible Assignee) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and any other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the third proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(iii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the obligations and limitations thereof and Section 2.19, it being understood that any tax forms required by Section 2.17(f) shall be provided to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 9.04 provided that such Participant agrees to be subject to the provisions of Sections 2.19 as if it were an assignee under paragraph (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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 the parties hereto shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any

obligation to disclose all or any portion of its Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or other obligations under the Loan Documents) except to the extent to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or any amended or successor version).

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 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.

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other "central" bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) [Reserved].

(f) Notwithstanding anything to the contrary herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement to an Affiliated Lender subject to the following limitations:

(i) Affiliated Lenders (other than Affiliated Debt Funds) will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of Borrowings, notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(ii) for purposes of any amendment, waiver or modification of any Loan Document (including such modifications pursuant to Section 9.02), or, subject to Section 9.02(d), in any plan of reorganization pursuant to the U.S. Bankruptcy Code, that in either case does not require the consent of each Lender, or that would not deprive such Affiliated Lender of its pro rata share of any payments to which it is entitled, Affiliated Lenders will be deemed to have voted in the same proportion as the Lenders that are not Affiliated Lenders voting on such matter; and each Affiliated Lender hereby acknowledges, agrees and consents that if, for any reason, its vote to accept or reject any plan pursuant to the U.S. Bankruptcy Code is not deemed to have been so voted, then such vote will be (x) deemed not to be in good faith and (y) "designated" pursuant to Section 1126(e) of the U.S. Bankruptcy Code such that the vote is not counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the U.S. Bankruptcy Code; provided that Affiliated Debt Funds will not be subject to such voting



limitations and will be entitled to vote as any other Lender; provided that Affiliated Debt Funds may not account for more than 49.9% of the “Required Lenders” in any Required Lender vote;

(iii) [reserved];

(iv) the aggregate principal amount of Term Loans purchased by assignment pursuant to this Section 9.04 and held at any one time by Affiliated Lenders (other than Affiliated Debt Funds) may not exceed 25.0% of the aggregate principal amount of all Term Loans outstanding at the time of such purchase, after giving effect to any substantially simultaneous cancellations thereof;

(v) Affiliated Lenders shall clearly identify themselves as an Affiliated Lender in the loan assignment documentation. In no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any lender is an Affiliated Lender or Affiliated Debt Fund nor shall the Administrative Agent be obligated to monitor the number of Affiliated Lenders or Affiliated Debt Funds or the aggregate amount of Term Loans held by Affiliated Lenders or Affiliated Debt Funds;

(vi) Affiliated Lenders (other than Affiliated Debt Funds) will not be permitted to vote on matters requiring a Required Lender vote, and the Term Loans held by Affiliated Lenders (other than Affiliated Debt Funds) shall be disregarded in determining (x) other Lenders’ Commitment or Loan percentages or (y) matters submitted to Lenders for consideration that do not require the consent of each Lender or each affected Lender; provided that the commitments of any Affiliated Lender shall not be increased, the Interest Payment Dates and the dates of any scheduled amortization payments (including at maturity) owed to any Affiliated Lender hereunder will not be extended and the amounts owing to any Affiliated Lender hereunder will not be reduced without the consent of such Affiliated Lender; and

(vii) each Lender making such assignment to such Affiliated Lender acknowledges and agrees that in connection with such assignment, (1) such Affiliated Lender then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on such Affiliated Lender, Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender’s lack of knowledge of the Material Non-Public Information and (3) none of Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, any Affiliated Lender or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, the Sponsor, its Subsidiaries, the Administrative Agent, such Affiliated Lender and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders.

(g) Any Lender may, at any time, assign all or a portion of its Term Loans to Holdings or any of its Subsidiaries, 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 2.11(a)(iii) or other customary procedures acceptable to the Administrative Agent and/or (y) open market purchases on a non-pro rata basis, provided that (i) any Term Loans that are so assigned will be automatically and irrevocably cancelled and the aggregate principal amount of the tranches and installments of the relevant Term Loans then outstanding shall be reduced pro rata by an amount equal to the par principal amount of such Term Loans, (ii) no Event of Default shall have occurred and be continuing and (iii) each Lender making such assignment to Holdings or any of its Subsidiaries acknowledges and agrees that in connection with such assignment, (1) Holdings or its Subsidiaries then may have, and later may come into possession of Material Non-Public Information, (2) such Lender has independently and, without reliance on Holdings, any of its Subsidiaries, the Administrative Agent or any of their respective Affiliates, made its own analysis and determination to enter into such assignment notwithstanding such Lender's lack of knowledge of the Material Non-Public Information and (3) none of Holdings, its Subsidiaries, the Administrative Agent, or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by Requirements of Law, any claims such Lender may have against Holdings, its Subsidiaries, the Administrative Agent, and their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Material Non-Public Information. Each Lender entering into such an assignment further acknowledges that the Material Non-Public Information may not be available to the Administrative Agent or the other Lenders.

(h) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Lender without the prior written consent of the Borrower; provided that, upon the inquiry by (i) any Lender to the Administrative Agent as to whether a specified potential assignee or prospective participant is on the Disqualified Lenders List or (ii) any potential assignee as to whether such potential assignee is on the Disqualified Lenders List the Administrative Agent shall be provide such list of Disqualified Lenders to such Lender or potential assignee, as applicable; provided, further, that inclusion on the Disqualified Lenders List shall not apply retroactively to disqualify any persons that have previously acquired an assignment or participation in the Loan if such person was not included on the Disqualified Lenders List at the time of such assignment or participation. Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, if any Lender was a Disqualified Lender at the time of the assignment of any Loans or Commitments to such Lender, following written notice from the Borrower to such Lender and the Administrative Agent and otherwise in accordance with Section 2.19(b), as applicable: (1) such Lender shall promptly assign all Loans and Commitments held by such Lender to an Eligible Assignee (and the signature of such Disqualified Lender shall not be required on any such assignment); provided that (A) the Administrative Agent shall not have any obligation to the Borrower, such Lender or any other Person to find such a replacement Lender, (B) the Borrower shall not have any obligation to such Disqualified Lender or any other Person to find such a replacement Lender or accept or consent to any such assignment to itself or any other Person subject to the Borrower's consent in accordance with Section 9.04(b)(i) and (C) the assignment of such Loans and/or Commitments, as the case may be, shall be at par plus accrued and unpaid interest and fees; (2) such Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of

any Class), all affected Lenders (or all affected Lenders of any Class), or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that (x) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Disqualified Lender adversely and in a manner that is disproportionate to other affected Lenders shall require the consent of such Disqualified Lender; and (3) no Disqualified Lender is entitled to receive information provided solely to Lenders by the Administrative Agent or any Lender or will be permitted to attend or participate in meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices or Borrowings, notices or prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II. Notwithstanding anything to the contrary herein, the Borrower (on behalf of itself and the other Loan Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Lender.

(i) Notwithstanding the foregoing, any Affiliated Lender shall be permitted, at its option, to contribute any Term Loans so assigned to such Affiliated Lender pursuant to this Section 9.04 to Holdings or any of its Subsidiaries for purposes of cancellation (in which case, such Term Loans shall be immediately and permanently cancelled upon such contribution), which contribution may be made (including, with the Borrower's consent, to the Borrower, whether through Holdings or otherwise), in exchange for Qualified Equity Interests of Holdings or the Borrower or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred (including, if applicable, as a Permitted Refinancing) pursuant to Section 6.01 at such time.

#### SECTION 9.05 Survival.

All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and all other amounts payable hereunder, the termination of the Commitments or the termination of this Agreement or any provision hereof.

#### SECTION 9.06 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any

separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, .pdf, electronic signature or other electronic means shall be effective as delivery of an original executed counterpart of this Agreement. The parties hereto agree that the signatures appearing on this Agreement are the same as handwritten signature for purposes of validity, enforceability and admissibility.

SECTION 9.07 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff.

If a Specified Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency, but not withholding or payroll accounts, employee benefits accounts, de minimis accounts or other accounts used exclusively for taxes or fiduciary or trust purposes) 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 the Borrower (excluding, for the avoidance of doubt, any Settlement Assets except to effect Settlement Payments such Lender is obligated to make to a third party in respect of such Settlement Assets or as otherwise agreed in writing between the Borrower and such Lender) against any of and all the obligations of the Borrower then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff and application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or related to this Agreement shall be construed in accordance with and governed by the laws of the State of New York.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any federal court sitting in the Borough of Manhattan in the City of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court except to the extent required by any Security Document to be brought in another jurisdiction pursuant to the terms of such Security Document. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings or the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.01. NOTHING IN ANY LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

#### SECTION 9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY 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 ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

#### SECTION 9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

#### SECTION 9.12 Confidentiality.

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (other than Excluded Affiliates), to its and its Affiliates' existing and prospective partners, financing sources (equity and debt), investors and investment advisors, and to its and their respective directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors and any numbering, administration or settlement service providers on a "need-to-know" basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be instructed to keep such Information confidential and any failure of such Persons acting on behalf of the Administrative Agent or the relevant Lender to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent or the relevant Lender, as applicable), (ii) to the extent requested or required by any governmental authority, regulatory authority or self-regulatory authority, required by applicable law, rule or regulation or by any subpoena or similar legal process or in connection with the exercise of remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder (including without limitation for purposes of establishing any appropriate due diligence defense) or any other pending legal, judicial or administrative proceeding or other compulsory process or upon the good faith determination by counsel that such Information should be disclosed in light of ongoing oversight or review of such Administrative Agent or Lender, as applicable, by any governmental or regulatory (including self-regulatory) authority having jurisdiction over the Administrative Agent or Lender or its Affiliates, as applicable; provided that (x) solely to the extent permitted by law and other than in connection with routine audits and reviews by regulatory and self-regulatory authorities, each Lender and the Administrative Agent shall promptly notify the Borrower of any such requested or required disclosure in connection with any legal or regulatory proceeding and (y) in the case of clause (ii) only, each Lender and the Administrative Agent shall use commercially reasonable efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, (iii) to any other party to this Agreement, (iv) to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (B) any actual or prospective counterparty (or its advisors) to any Swap Agreement or derivative transaction relating to any Loan Party or its Subsidiaries and its obligations under the Loan Documents or (C) any pledgee referred to in Section 9.04(d), in the case of each of the preceding clauses (A) through (C), other than to a Disqualified Lender; provided that any such disclosure under this clause (iv) shall be made subject to the acknowledgment and acceptance by such assignee or Participant, prospective assignee or Participant, actual or prospective counterparty (or its advisors) or pledgee, as applicable, that such Information is being disseminated on a confidential basis (on substantially the same terms set forth in this Section 9.12 or as is reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the customary market standards for dissemination of such type of Information, in the event of any electronic access through Intralinks, another website or similar electronic system or platform, which shall in any event require "click through" or other affirmative action on the part of the

recipient to access such Information and acknowledge its confidentiality obligations in respect thereof, in each case on terms reasonably acceptable to the Borrower, (v) if required by any rating agency; provided that prior to any such disclosure, such rating agency shall have agreed in writing to maintain the confidentiality of such Information, (vi) to service providers providing administrative and ministerial services solely in connection with the syndication and administration of the Loan Documents and the facilities (e.g., identities of parties, maturity dates, interest rates, etc.) on a confidential basis, or (vii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.12, (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary, which source is not known (after due inquiry) by the recipient of such information to be subject to a confidentiality obligation or (z) is independently developed by it without use of any other information subject to this Section 9.12. For the purposes hereof, "Information" means all information received from or on behalf of Holdings or the Borrower relating to Holdings, the Borrower, any other Subsidiary or their business other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings, the Borrower or any Subsidiary. Notwithstanding the foregoing, provided that the Disqualified Lenders List has been shared with the Lenders, no such information shall be disclosed to a Disqualified Lender that constitutes a Disqualified Lender at the time of such disclosure without the Borrower's prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12(a)) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

#### SECTION 9.13 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.

#### SECTION 9.14 Release of Liens and Guarantees.

(a) A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, (1) upon the consummation of any transaction or designation permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary (including pursuant to a permitted merger or amalgamation with a Subsidiary that is not a Loan Party or a designation as an Unrestricted Subsidiary) or becomes an Excluded Subsidiary or (2) upon the request of the Borrower, in connection with a transaction permitted under this Agreement, as a result of which such Subsidiary Loan Party ceases to be a Wholly Owned Subsidiary; provided that the release of any Subsidiary Loan Party from its obligations under the Loan Documents (i) if such Subsidiary Loan Party becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof and/or (ii) pursuant to preceding clause (2) of this Section 9.14(a), such release shall only be permitted if (y) after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be released, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time and (z) a Responsible Officer of the Borrower certifies to the Administrative Agent compliance with preceding clause (y); provided, further, that no such release shall occur if such Subsidiary Loan Party continues to be a guarantor in respect of Existing First Lien Loans, any Other Term Loans, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing in respect of any of the foregoing; provided, further, that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise, or (3) as provided in any Pari Passu Intercreditor Agreement. Upon any sale or other transfer by any Loan Party (other than to any other Loan Party) of any Collateral in a transaction permitted under this Agreement, or upon the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral or upon any Collateral becoming an Excluded Asset, the security interests in such Collateral created by the Security Documents shall be automatically released. Upon the release of Holdings or any Subsidiary Loan Party from its Guarantee in compliance with this Agreement, the security interest in any Collateral owned by Holdings or such Subsidiary created by the Security Documents shall be automatically released. Upon the designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Agreement, the security interest created by the Security Documents in the Equity Interests of such new Unrestricted Subsidiary shall automatically be released. To the extent the release of any Lien in any Collateral 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 9.02), the security interest in such Collateral shall be automatically released. To the extent the release of any security interest in any Collateral is required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Loan Documents, the security interest



in such Collateral shall be automatically released. In addition, liens shall be released and guarantees released in accordance with the terms of the Security Documents and the Guarantee Agreement. Upon the Termination Date all obligations under the Loan Documents (other than contingent indemnification obligations for which no claim has been made) and all security interests created by the Security Documents shall be automatically released. Any such release shall not in any manner discharge, affect, or impair the Secured Obligations (other than those being discharged or released) or any Liens (other than those being discharged or 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 comprised of Excluded Assets or otherwise released in accordance with the provisions of the Loan Documents. In connection with any termination or release pursuant to this Section 9.14, without the further consent of any Lender or other Secured Party, the Administrative Agent or the Collateral Agent, as the case may be, shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence or to file or register in any office such termination or release so long as the Borrower or applicable Loan Party shall have provided the Administrative Agent or the Collateral Agent, as the case may be, such certifications or documents as the Administrative Agent or the Collateral Agent, as the case may be, shall reasonably request certifying that such termination or release is in compliance with and permitted under this Agreement (it being agreed and understood that the Administrative Agent or the Collateral Agent, as the case may be, may conclusively rely without further inquiry on a certificate of an officer of the Borrower or applicable Loan Party as to such termination or release being made in compliance with this Agreement. The Administrative Agent or the Collateral Agent, as the case may be, will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to subordinate its Lien on any property granted to or held by the Administrative Agent or the Collateral Agent, as the case may be, under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(ii) (but only pursuant to clauses (d) and (j) of the definition of "Permitted Encumbrances), (iv), (v), (xi), (xii), (xxiv), (xxix) or (xxxv).

(b) Each of the Lenders irrevocably authorizes the Administrative Agent or the Collateral Agent, as the case may be, to (i) provide any release or evidence of release, termination or subordination contemplated by this Section 9.14 (and upon request by the Administrative Agent or the Collateral Agent, as the case may be, at any time, the Required Lenders will confirm in writing the Administrative Agent's authority or the Collateral Agent's authority, as the case may be, to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under any Loan Document, in each case in accordance with the terms of the Loan Documents and this Section 9.14), (ii) enter into subordination or intercreditor agreements with respect to Indebtedness to the extent the Administrative Agent or Collateral Agent is otherwise contemplated herein as being a party to such intercreditor or subordination agreement, in each case to the extent such agreements, at the time they are first entered into, are substantially consistent with the terms set forth on Exhibit E-1 or E-2 annexed hereto, together with (A) any immaterial changes and (B) material changes thereto in light of prevailing market conditions, which material changes shall be approved by the Required Lenders (it being understood that junior Liens are not required to be pari passu with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are pari passu with, or junior in priority to, other Liens that are junior to the Liens securing the Initial Term Loans); and (iii) enter into and sign for and on behalf of the Lenders as Secured Parties the Security Documents and the Closing Date Intercreditor Agreement for the benefit of the Lenders and the other Secured Parties.

SECTION 9.15 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent 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 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, that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto and it is not relying on the Administrative Agent or the Lenders for such advice, 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 of the Administrative Agent and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings, any of their respective Affiliates or any other Person and (B) none of the Administrative Agent and the Lenders 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 Administrative Agent and 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 Administrative Agent and the Lenders 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, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent 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 9.16 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 the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

#### SECTION 9.17 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower or any other Loan Party in respect of any such sum due from it to the Secured Parties hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Requirements of Law).

#### SECTION 9.18 Intercreditor Agreement.

Each Secured Party hereby agrees that the Administrative Agent and/or Collateral Agent may enter into the Closing Date Intercreditor Agreement and any other intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01, any applicable Liens on Collateral permitted pursuant to Section 6.02 and, in each case, together with the defined terms referenced therein, but subject to the final sentence of Section 9.14(a)) on its behalf and agrees to be bound by the terms thereof and, in each case, consents and agrees to the appointment of Wilmington Trust, National Association (or its affiliated designee, representative, agent or successor) on its behalf as collateral agent, respectively, thereunder. Each Lender (a) understands, acknowledges and agrees that Liens have been created on the Collateral pursuant to the Existing First Lien Loan Documents, which Liens shall be subject to the terms and conditions of the Closing Date Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Closing Date Intercreditor Agreement or any other applicable Intercreditor Agreement (if entered into) and (c) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Closing Date Intercreditor Agreement and, if applicable, any other Intercreditor Agreement (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements (subject, if applicable, to the last sentence of Section 9.02(b))), and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof).

#### SECTION 9.19 Cashless Settlement.

Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any the applicable Resolution Authority.

*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**HOYA INTERMEDIATE, LLC**  
a Delaware limited liability company  
as Holdings

By:       /s/ Stanley Chia        
Name: Stanley Chia  
Title: President and Chief Executive Officer

**HOYA MIDCO, LLC**  
a Delaware limited liability company  
as Borrower

By:       /s/ Stanley Chia        
Name: Stanley Chia  
Title: President and Chief Executive Officer

*[Signature Page to Project Bears Credit Agreement]*

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**WILMINGTON TRUST, NATIONAL ASSOCIATION**  
as Administrative Agent and Collateral Agent

By: /s/ Jessica A. Jankiewicz

Name: Jessica A. Jankiewicz

Title: Assistant Vice President

*[Signature Page to Project Bears Credit Agreement]*

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**GSO CREDIT ALPHA FUND II-C AIV-2 LP**

as a Lender

By: GSO Credit Alpha Associates II LP, its general partner

By: GSO Credit Alpha Associates II (Delaware) LLC, its  
general partner

By: GSO Holdings I. L.L.C., its managing member

By: /s/ Marisa Beeney

Name: Marisa Beeney

Title: Authorized Signatory

**GSO CSF III AIV-2 LP**

as a Lender

By: GSO Capital Solutions Associates III LP, its general  
partner

By: GSO Capital Solutions Associates III (Delaware) LLC,  
its general partner

By: /s/ Marisa Beeney

Name: Marisa Beeney

Title: Authorized Signatory

*[Signature Page to Project Bears Credit Agreement]*

**OFFICE LEASE**

Between

111 N. CANAL, LLC, as Landlord

and

VIVID SEATS LTD., as Tenant

111 North Canal Street, Chicago, Illinois



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**EXHIBITS**

EXHIBIT A	Floor Plans of Premises
EXHIBIT B	Base Rent Schedule
EXHIBIT C	Workletter
EXHIBIT D	Rules and Regulations
EXHIBIT E	Cleaning Specifications
EXHIBIT F	Form of Commencement Date Certificate

## OFFICE LEASE

THIS LEASE made as of the 30th day of April, 2014 between 111 N. Canal, LLC, a Delaware limited liability company (“**Landlord**”) and Vivid Seats Ltd., an Illinois corporation (“**Tenant**”).

WITNESSETH:

### ARTICLE 1 Premises and Term

#### A. Premises.

1. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain premises in the building located at 111 North Canal Street, Chicago, Illinois, (the “**Building**”) being approximately 30,951 square feet of Rentable Area (as hereinafter defined) located on the north side of the 8th floor of the Building as shown on Exhibit A attached hereto (together with non-exclusive rights to common areas within the Building, the “**Premises**”). The land upon which the Building is located (the “**Land**”), the Building and all other improvements on the Land are hereinafter collectively referred to as the “**Property**.”

2. For purposes of this Lease, the term “**Rentable Area**” shall mean, in respect of any space, the rentable area or the sum of the rentable areas of such space determined in accordance with the methods of measuring rentable area and usable area as described in The Standard Method for Measuring Floor Area in Office Buildings ANSI Z65.1-2010, Method B, promulgated by The Building Owners and Managers Association (BOMA) International (the “**Measurement Method**”). Landlord may remeasure the Rentable Area of the Building from time to time in accordance with the Measurement Method; provided that no such re-measurement shall cause a revision or adjustment of the Rentable Area contained in the Premises.

**B. Term.** The term (“**Term**”) of this Lease shall commence on the date (the “**Commencement Date**”) that is earlier to occur of (a) the date on which Tenant commences business operations in the Premises and (b) one hundred twenty (120) days after Landlord’s Work (as defined in the Workletter attached hereto as Exhibit C (the “**Workletter**”)) in the Premises has been substantially completed, as such date is determined pursuant to the Workletter. The Term shall end on the day immediately preceding the eleventh (11th) anniversary of the Commencement Date provided that, if the Commencement Date does not occur on the first day of a month, the Term shall end on the last day of the 132nd full calendar month following the Commencement Date (such later date being hereinafter referred to as the “**Expiration Date**”), unless sooner terminated pursuant to the terms of this Lease. Promptly after the occurrence of the Commencement Date, Landlord and Tenant shall execute a certificate confirming the actual Commencement Date and all other related dates under this Lease in the form of Exhibit F attached hereto and made a part hereof. It is expressly agreed to and acknowledged by the Landlord and Tenant that the terms of the Workletter are incorporated herein and made a part hereof.

### ARTICLE 2 Base Rent

**A.** Tenant shall pay to Landlord annual fixed rent (“**Base Rent**”) with respect to the Premises according to the Base Rent schedule attached hereto as Exhibit B. Except as otherwise expressly specified herein and subject to any credits against Base Rent as set forth in this Lease or in the Workletter, Base Rent shall be payable in equal monthly installments over such year, each installment being payable in advance on the first day of each and every calendar month

during the Term, except that if Tenant's obligation to pay Base Rent commences on a day other than the first day of a calendar month, or ends on a day other than the last day of a calendar month, Base Rent for such month shall be prorated by multiplying same by a fraction, the numerator of which is the number of days with respect to which Base Rent is payable during such calendar month and the denominator of which is the total number of days within such calendar month. Any amounts paid in advance on account of the Base Rent for a particular month which are in excess of the actual Base Rent payable for such month shall be credited against the monthly installment of Base Rent next due hereunder or, if no further Base Rent is then due hereunder, shall be repaid to Tenant within thirty (30) days thereafter.

**B.** For purposes of this Lease, the term "**Additional Rent**" shall mean Tenant's Pro Rata Share of Taxes in excess of Taxes which became due and were paid during the Base Year (as defined in Section 3(C)) ("**Tenant's Tax Payment**"), Tenant's Pro Rata Share of Operating Expenses in excess of Operating Expenses paid during the Base Year ("**Tenant's Operating Expense Payment**"), and any other amounts which Tenant is or becomes obligated to pay Landlord under this Lease. Base Rent and Additional Rent are sometimes hereinafter referred to collectively as "**Rent**," and all remedies applicable to the non-payment of Base Rent shall be applicable thereto. Rent shall be paid in good funds by check (including Tenant's uncertified personal check) or ACH or wire transfer in currency which at the time or times of payment represents legal tender for public and private debts in the United States of America, at any office maintained by Landlord or its agent at the Property, or at such other place in the United States of America as Landlord may reasonably designate by notice to Tenant, including without limitation any "lock box" or other address established for payment of rent in connection with any financing secured by the Building. Except to the extent otherwise expressly provided in this Lease, Rent shall be paid without any prior demand or notice therefor and without any deduction, set-off or counterclaim, or relief from any valuation or appraisal laws. Any Rent which is not paid within ten (10) days of being due shall bear interest from the date due until the date paid at the Default Rate (as defined below); and, in addition, Tenant shall pay Landlord a late charge for any Rent payment which is paid more than ten (10) days after its due date equal to five percent (5%) of such payment.

**C.** Payments of Base Rent, Tenant's Tax Payments and Tenant's Operating Expense Payment shall be abated from and after the Commencement Date through the day immediately preceding the day that is thirteen (13) months after the Commencement Date, provided that a continuing Event of Default by Tenant does not exist on the due date of any such payment.

### **ARTICLE 3**

#### **Additional Rent**

##### **A. Taxes.**

1. Subject to Section 2(C), commencing on the Commencement Date, Tenant shall pay Landlord in the manner described below an amount equal to Tenant's Tax Payments. Taxes shall be calculated on a cash basis, reflecting the amount actually due and payable in each calendar year which includes any portion of the Term (subject to prorations in accordance with Section 3(E) hereof), without regard to any different fiscal year used by any government or municipal authority and notwithstanding that any of such items may be assessed or imposed in a different calendar year.

2. For purposes of this Lease, "**Taxes**" shall mean all federal (if any), state, county or local governmental or municipal real estate taxes, fees, assessments, governmental charges, or other governmental impositions of every kind and nature, whether general, special, ordinary or extraordinary which are assessed, levied, or imposed upon all or any part of the

Property and/or the fixtures, machinery, equipment or apparatus located on or affixed to the Property and owned or leased and used by Landlord exclusively in connection with the Property and all tenants of the Property generally and not exclusively provided to or available to any particular tenant or group of tenants (collectively, the “**Taxable Equipment**”) and/or the sidewalks, plazas or streets in front of or adjacent to the Property (provided that all assessments shall be treated as being payable over the longest permitted period).

3. Notwithstanding the foregoing, there shall be excluded from Taxes: (i) all excess profits, revenue, excise, transfer, gain, transfer gain, foreign ownership or control, mortgage, intangible, franchise, gift, capital stock, inheritance and succession, estate and income taxes not specifically included in Taxes pursuant to Section 3(A)(4) hereof; (ii) any amounts attributable to fees or assessments for public improvements located outside of the Property (other than sidewalks, curbs and other similar improvements to public areas adjacent to or abutting the Property) imposed upon Landlord in connection with the development or construction of the Building or the Property; and (iii) any fines, penalties, costs or interest on account of late payment or non-payment of any Taxes; and (iv) any sales taxes on Taxable Equipment. All such items due and payable by Landlord and excluded from Taxes shall be the sole responsibility of Landlord.

4. If, due to a future change in the method of taxation, the State of Illinois, or any political subdivision of that state or any other governmental authority having jurisdiction over the Property shall, in substitution for, in whole or in part, any tax which would constitute Taxes, or any increase in any such tax, (a) impose a new tax on real estate or Taxable Equipment (including, without limitation, any transit tax, water or sewer rent, assessment, charge or fee on real estate or generally and not based on the consumption or actual usage of any service or utility or the number of occupants of the Property), (b) impose a new tax based upon (or interpret any existing tax to apply to) the creation of leasehold interests or the receipt of rent including gross receipts or sales taxes applicable to the receipt of rent but only if such taxes are not based on business income or receipts generally and only to the extent rent from tenants in the Building is treated as the only rent and/or other income from the Building received by Landlord, and/or (c) levy against Landlord as an owner of real property any income, excess profit, revenue, excise, franchise or capital stock tax not levied against business owners generally; such new tax, assessment, charge, fee or income, excess profit, rent, revenue, excise, franchise or capital stock tax (computed as if the Property were the only asset or business of Landlord) shall be deemed to be included within the definition of “**Taxes**” under this Lease. With respect to each tax year during the Term, Landlord shall initiate and pursue strategies to protest, reduce, limit any increase in or otherwise minimize Taxes and, if Landlord, in its good faith judgment, deems it cost-effective to do so, initiate and pursue in good faith an application or proceeding seeking a reduction in or abatement of Taxes or the assessed valuation of the Building and the Land, in each case using an experienced real estate tax attorney or other tax consultant. Landlord’s actual, reasonable costs and expenses paid to third parties (including, without limitation, all reasonable fees for consultants and attorneys) paid by Landlord in seeking a reduction or abatement of Taxes or the assessed valuation of the Building and Land shall also be included in Taxes in the calendar year such expenses are paid.

5. If Taxes attributable to any portion of the Term shall increase after payment thereof by Landlord for any reason (except as provided in Section 3(A)(3) hereof) including, without limitation, error or reassessment by applicable governmental or municipal authorities and such increase is not reflected in Tenant’s payments pursuant to the foregoing provisions of this Section, Landlord shall promptly furnish a statement thereof to Tenant and Tenant shall pay Landlord within thirty (30) days after receipt of such statement, Tenant’s Pro Rata Share (as of the date Tenant made the applicable payment) of such increased Taxes. If Landlord receives a refund of any Taxes or receives notification of the approval of a refund of any Taxes, for any calendar year with respect to which Tenant has paid its Pro Rata Share and (i) the calendar year in which Landlord receives such refund or notification is not more than two (2) calendar years after the calendar year

in which the Term of this Lease ended and (ii) an Event of Default by Tenant is not then continuing, Landlord shall remit to Tenant its allocable share of such refund within thirty (30) days after Landlord's receipt thereof of such refund, or, if an Event of Default by Tenant is then continuing, within thirty (30) days after both Landlord's receipt of such refund and Tenant's cure of such Event of Default.

## **B. Operating Expenses.**

1. Subject to Section 2(C), commencing on the Commencement Date Tenant shall pay Landlord in the manner described below an amount equal to Tenant's Operating Expense Payments.

2. For purposes of this Lease, "**Operating Expenses**" shall mean all expenses, costs and amounts (other than Taxes and exclusions therefrom) of every kind and nature which are due and payable in accordance with generally accepted accounting principles, as consistently applied (collectively, "**GAAP**") in respect of any calendar year any portion of which occurs during the Term, because of or in connection with the management, repair, maintenance and operation of the Building and the Property (which for purposes of this Section 3(B) shall be deemed to include any adjoining public areas which Landlord is obligated to maintain), including without limitation, any amounts paid for (except to the extent excluded below): (a) utilities for the Property, including, but not limited to, electricity, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning, ventilating, and chilled water, including both consumption and capacity charges; (b) permits, licenses and certificates necessary to operate, manage and lease the Property other than those related to the development of the Property or construction of the Building or which are required as a condition to initial occupancy of the Building; (c) insurance applicable to the Property, not limited to the amount of coverage Landlord is required to provide under this Lease; (d) supplies, tools, equipment and materials used in the operation, repair, cleaning and maintenance of the Property; (e) accounting, legal, inspection, consulting, concierge and other services for the Building; (f) the rental of equipment not affixed to the Building which is used in providing repair, maintenance or janitorial services; (g) fees for management services (not to exceed three percent of annual gross revenue for the Building); (h) the fair rental value of any space devoted to management or operation of the Building, including without limitation the Building's fitness room and conference rooms; (i) wages, salaries and other compensation and benefits for all persons (up to the level of building manager) employed by Landlord or whose wages are chargeable to Landlord (but only to the extent Landlord pays or reimburses its manager for such wages) directly engaged in the operation, maintenance or security of the Property, including any employer's Social Security taxes, unemployment taxes or insurance, and any other taxes in respect of such wages, salaries, compensation and benefits; and (j) operation, repair, and maintenance of all systems and equipment and components thereof (including replacement of components), including without limitation, janitorial service, alarm and security service, window cleaning, trash removal, elevator maintenance, cleaning of walks, plazas and building walls, removal of ice and snow, replacement of wall and floor coverings, ceiling tiles and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities of the Building, maintenance and non-capital replacement of shrubs, trees, grass, sod and other landscaped items, irrigation systems, drainage facilities, fences, curbs and walkways, and roof repairs.

3. If Landlord has leased less than one hundred percent (100%) of the Rentable Area of the Building for all or a portion of any calendar year (including the Base Year), Landlord may reasonably determine the amount of Operating Expenses that vary with occupancy of the Building ("**Variable Operating Expenses**") that would have been incurred had 100% of the Rentable Area of the Building been leased for such calendar year and the amount so determined shall be deemed to be the amount of such Variable Operating Expenses for such calendar year, provided, however, that in no event shall Landlord be entitled to recover in any calendar year, in

total or in the aggregate within any category, more than the total Operating Expenses actually incurred by Landlord during any calendar year. The categories of Operating Expenses that will be considered Variable Operating Expenses shall include, but not be limited to the following:

- a) Cleaning, janitorial and trash removal expenses and supplies;
- b) Contract elevator maintenance services;
- c) Security services;
- d) Engineer expenses, except if incurred in connection with capital improvements;
- e) Management fees (not to exceed three percent of the annual gross revenue of the Building); and
- f) Utilities, including electricity, water and chilled water consumption and capacity charges, provided that the portion of such utilities which is fixed and does not vary with occupancy shall not be so increased.

4. Notwithstanding the foregoing, Operating Expenses shall not include:

- a) Interest and principal payments on mortgage debt;
- b) Loan fees and participation payments;
- c) Ground rental payments;
- d) Costs of "capital improvements," as that term is defined under GAAP, including any capital expenditures made for improvements required to comply with any Law enacted on or before the Commencement Date, provided however that Operating Expenses shall include any capital expenditures made during the Term (as amortized by Landlord over the useful life of the applicable improvements, as reasonably determined by Landlord in accordance with customary methods employed by owners of office buildings from time to time, with interest on the unamortized amount at a rate per annum equal to the prime rate of interest announced from time to time by JPMorgan Chase Bank, N.A. or any successor thereto (the "**Prime Rate**"), such rate to change when and as such announced prime rate changes) (i) for any improvement commenced after the Commencement Date, which is primarily intended to reduce any component of Operating Expenses, or (ii) to comply with any Law first enacted after the Commencement Date, provided that the annual amortized amount included in Operating Expenses for any year on account of such capital expenditures for improvements primarily intended to reduce Operating Expenses shall not exceed Landlord's reasonable projection of annual savings in Operating Expenses to be achieved by such capital improvements;
- e) Costs of alterations to the Premises of Tenant or the premises of other tenants of the Building including, without limitation, permit, license and inspection costs, or the cost of any work furnished by the Landlord without charge as an inducement for a tenant to lease space (*i.e.*, free rent, improvement allowances);
- f) Depreciation of the Building or its equipment;

- g) The wages of any employee who does not devote substantially all of his or her time to the Building (allocation of the time of pooled employees is permitted);
- h) Salaries and other compensation of executive officers of the Landlord or its managing agent senior to the individual building manager;
- i) Taxes or any other amounts excluded from Taxes under Section 3(A)(3);
- j) Costs associated with utilities, services or amenities not available to all tenants or provided to any tenant to a materially greater extent or more favorable manner than generally provided to other tenants;
- k) Costs of correcting latent defects in the construction of the Building or its systems;
- l) Costs (including fines and penalties), to comply with ADA and environmental laws enacted on or before the Commencement Date including without limitation, laws relating to the phase out of so-called "Freon" as a coolant and changes in the building codes;
- m) Costs of work performed or service provided for which fees are charged or other compensation received;
- n) Legal expenses incurred in connection with tenant leases including, without limitation, negotiations with prospective tenants and enforcing provisions of this Lease or other leases in the Building;
- o) Costs for purchases of sculptures, paintings and other objects of art located in the interior or the exterior of the Building or immediately adjacent thereto;
- p) Other than management fees which are expressly limited above, any cost representing an amount paid to any entity related to Landlord which is in excess of the amount which would have been paid in the absence of such relationship;
- q) Expenditures for repairs or maintenance which are covered by warranties, guarantees or service contracts;
- r) Expenditures for which the Landlord has been or is entitled to be reimbursed by third parties such as insurance companies;
- s) Any costs incurred in installing any specialty facility in the Building which is operated by Landlord or an affiliate of Landlord and generally made available to the Building's occupants including, but not limited to, an observatory, luncheon or cafeteria, fitness room, conference facility or day care center; provided, however, Operating Expenses shall include the operating and maintenance costs thereof; provided further, however, if Landlord or an affiliate of Landlord collects user fees in connection with the use of such specialty facility, then Operating Expenses shall only include any amounts by which the operating and maintenance costs of such specialty facility exceed the user fees collected by Landlord or its affiliates from the operation thereof.
- t) Advertising, promotional, marketing, and leasing expenses including any space planner's fees, lease takeover costs, and all other ancillary expenses;



- u) Real estate brokerage and leasing commissions;
- v) Expenses in connection with repairs or other work occasioned by the exercise of the right of eminent domain;
- w) Damages or unrecoverable expenses incurred due to the negligence of the Landlord, its agents, servants, or employees;
- x) Debt costs or the costs of financing or refinancing;
- y) Any bad debt loss, rent loss, or reserves for bad debt or rent loss;
- z) Costs, fines or penalties incurred due to violations by the Landlord of any governmental rule or authority;
- aa) Structural repairs;
- bb) Compensation paid to clerks, attendants or other persons solely dedicated to commercial concessions operated by the Landlord;
- cc) Costs associated with the operation of the business of the entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not engaged in Building operation, disputes of Landlord with building management, or fees or costs paid in connection with disputes with other tenants;
- dd) Charitable contributions; and
- ee) Any customer free rent periods or credits, tenant improvement allowances and other customary economic incentives required to enter into leases with tenants.

Operating Expenses for the Building are to be "net" only and for that purpose shall be deemed reduced by the amounts of any insurance reimbursement or recovery, other reimbursement, recoupment, payment discount, credit, reduction, allowance or the like received by or credited to Landlord.

**C. Tenant's Pro Rata Share.** For purposes of this Lease, "Tenant's Pro Rata Share" for any calendar year shall mean the percentage determined by dividing the Rentable Area of the Premises by an amount equal to the Rentable Area of the Building as adjusted pursuant to Section 1(A)(2). As of the Commencement Date Tenant's Pro Rata Share is 3.63%. Appropriate adjustments shall be made in calculating Tenant's Pro Rata Share on a per diem basis if the Rentable Area of the Building changes during any calendar year. The "**Base Year**" shall mean calendar year 2015.

**D. Manner of Payment of Taxes and Operating Expenses.**

1. On or before the Commencement Date and annually thereafter, Landlord shall deliver to Tenant a notice setting forth Landlord's good faith estimate of the required Tenant's Tax Payments and Tenant's Operating Expense Payments for the applicable full or partial calendar

year (“**Landlord’s Estimate**”). Commencing on the Commencement Date and continuing thereafter on the first day of each month throughout the Term, Tenant shall pay one twelfth (1/12th) of the amount Landlord’s Estimate, subject to the abatement of such amounts as set forth under Section 2(C). Landlord’s Estimate may be adjusted in good faith from time to time by Landlord by written notice to Tenant not more than twice within a calendar year. Any such adjustments of Landlord’s Estimate within a calendar year shall be based on Landlord’s reasonable expectations. Any revision to any Landlord’s Estimate shall become effective commencing on the first day of the calendar month that is at least thirty (30) days after Tenant’s receipt of the revised Landlord’s Estimate. If Landlord fails to timely deliver Landlord’s Estimate, Tenant shall pay one-twelfth (1/12th) of the actual Tenant’s Tax Payments and Tenant’s Operating Expense Payments paid for the previous calendar year, and commencing on the first day of the calendar month following thirty (30) days after Tenant’s receipt of Landlord’s Estimate for the current calendar year, the monthly payment on account of estimated monthly installments of Tenant’s Tax Payments and Tenant’s Operating Expense Payments shall be increased or decreased to reflect the estimate set forth therein.

2. Within one hundred fifty (150) days after the end of each calendar year containing a portion of the Term, or as soon thereafter as practicable, Landlord shall send Tenant a statement setting forth the actual Operating Expenses and Taxes for such calendar year, and the resulting actual Tenant’s Tax Payments and Tenant’s Operating Expense Payments owed by Tenant for such calendar year (“**Landlord’s Statement**”). Tenant may, upon reasonable prior written notice to Landlord given not later than one hundred twenty (120) days after Tenant’s receipt of a Landlord’s Statement, audit Landlord’s books and records with respect to such Landlord’s Statement for the prior calendar year. If Tenant elects to audit, then the cost of such audit shall be borne by Tenant unless it is determined by the audit that the amount of Tenant’s Tax. Payments and Tenant’s Operating Expense Payments set forth in a Landlord’s Statement for a particular year exceeds the actual Tenant’s Tax Payments and Tenant’s Operating Expenses Payments for such by five percent (5%) or more, in which event Landlord shall pay the reasonable costs of such audit.

3. If the aggregate amount paid by Tenant pursuant to Landlord’s Estimate with respect to any calendar year is less than the actual amount due from Tenant set forth in Landlord’s Statement for such calendar year, Tenant shall pay to Landlord the amount of such underpayment within thirty (30) days after receipt of the Landlord’s Statement showing such underpayment.

4. If Landlord’s Estimate with respect to any calendar year is more than the actual amount set forth in Landlord’s Statement for such calendar year, Landlord shall credit the amount of any corresponding overpayment by Tenant against the next installment(s) of Base Rent and Additional Rent, provided that if no further installments of Base Rent or Additional Rent shall be due, Landlord shall refund to Tenant the amount of such overpayment at the same time that Landlord delivers Landlord’s Statement to Tenant.

5. If the Term shall have expired or been terminated, the obligation of Tenant to pay Tenant’s Tax Payments and Tenant’s Operating Expense Payments for the final calendar year through the date on which this Lease expired or was terminated, and Landlord’s obligation to reimburse Tenant for any overpayment on account thereof, shall each survive for a two (2) year period following such expiration or termination.

6. In no event shall a decrease in the Taxes or Operating Expenses decrease the monthly Base Rent payable hereunder (except to the extent a credit against Base Rent for overpayment by Tenant is provided for in Section 3(D)(4) above).

**E. Proration.** If Tenant’s obligation to pay Tenant’s Tax Payments and Tenant’s Operating Expense Payments commences on any date other than January 1 or ends on any date

other than December 31, the amount of Taxes and Operating Expenses for such first or final calendar year shall be prorated to reflect the portion of such years after the Commencement Date, and before the Expiration Date or earlier date that this Lease may be terminated, as the case may be. Such proration shall be made by multiplying the Taxes or Operating Expenses, as applicable, in respect of any such calendar year by a fraction, the numerator of which shall be the number of days in such calendar year for which Tenant is required to pay Tenant's Tax Payments and Tenant's Operating Expense Payments, as applicable, and the denominator of which shall be 365.

#### **ARTICLE 4**

##### **Delivery and Condition of Premises**

**A.** Subject to and upon the terms herein set forth, Landlord leases to Tenant and Tenant leases from Landlord the Premises on an "as is" basis (except as otherwise expressly set forth herein, including Landlord's obligation to perform Landlord's Base Building Work described on Exhibit C-1 hereto). Landlord represents and warrants that the Landlord's Work shall comply with the Americans With Disabilities Act, and to Landlord's knowledge the Premises are in compliance with all environmental laws. Landlord shall indemnify, defend, protect and hold harmless Tenant against any loss, cost or damage suffered by Tenant caused by a breach of the foregoing representation or the presence of any hazardous materials contained in the Premises in violation of any environmental law present at the time the Premises are first turned over to Tenant for performance of the Initial Tenant Work. By taking possession of the Premises, Tenant is deemed to have accepted the Premises and agreed that, except for latent defects or conditions of which Tenant notifies Landlord in writing within one hundred twenty (120) days after Tenant commences Initial Tenant Work, the Premises are in good order and satisfactory condition for Tenant's construction of the Initial Tenant Work (as defined in the Workletter), with no representation or warranty by Landlord as to the condition of the Premises or the Building or suitability thereof for Tenant's use.

**B.** If Tenant, with Landlord's prior written approval, takes possession of the Premises prior to the Commencement Date for the sole purpose of performing any improvements therein or installing furniture, equipment or other personal property of Tenant, such possession shall be subject to all of the terms and conditions of this Lease, except that Tenant shall not be required to pay Rent with respect to the period of time prior to the Commencement Date during which Tenant performs such work. Tenant shall, however, be liable for the cost of any utilities and after hours freight elevator services that are provided to Tenant during the period of Tenant's possession prior to the Commencement Date. Nothing herein shall be construed as granting Tenant the right to take possession of the Premises prior to the Commencement Date, whether for construction, fixturing or any other purpose, without the prior written consent of Landlord, which shall not be unreasonably withheld.

#### **ARTICLE 5**

##### **Use; Compliance with Laws and Rules**

**A. Uses.** Tenant may use the Premises for general, administrative and executive office purposes and any lawful ancillary purposes in compliance with Laws in effect from time to time during the Term, but for no other purpose whatsoever.

**B. Compliance with Laws.** Tenant shall comply with all statutes, laws, orders, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, policies and requirements of all local, municipal, state and federal governments, departments, agencies, commissions, boards or political subdivisions having jurisdiction over the Building or the Land (collectively, "**Laws**") and with all applicable Board of Fire Insurance Underwriters' regulations and requirements, in each instance if and to the extent that same relate to Tenant's particular manner

of use of the Premises or any Alteration Work (as hereinafter defined) that Tenant proposes to perform therein (whether directed to Tenant or Landlord). Landlord shall be responsible for effecting (and Landlord shall promptly effect) any repairs, additions, alterations or changes to the Premises and the Building that are necessitated by the acts or omissions of Landlord, its agents, contractors, subcontractors or employees or that are required to comply with Laws (except to the extent the Building is exempted from compliance with any Law) that affect office buildings generally or the Building specifically and are not required solely because of the particular manner of use of the Premises by Tenant. Landlord may include the costs of performing its obligations under the preceding sentence in Operating Expenses solely to the extent permitted pursuant to Article 3 hereof. Tenant shall not knowingly or negligently: (i) make or permit any use of the Premises or the Property; or (ii) do or permit to be done anything in or on the Premises or the Property, or bring on or keep anything in the Premises or the Property, in each case that is in violation of any Laws in effect. Tenant shall not, and shall not allow its employees, agents, contractors or invitees, to bring into the Building or the Premises any dangerous or hazardous materials, except for customary office and cleaning supplies, provided Tenant uses, stores and disposes of the same in compliance with all applicable Laws. Tenant shall procure and maintain all licenses and permits legally necessary for Tenant's use of the Premises and any Alteration Work and shall allow Landlord to inspect them upon reasonable prior request at no cost to Tenant.

**C. Building Rules.** Tenant shall comply with all rules set forth on Exhibit D (the "**Rules**"). To the extent of any conflict between the Rules and the provisions of this Lease, the provisions of this Lease shall control. Landlord shall have the right to reasonably amend the Rules and supplement the same with other reasonable rules (not inconsistent with this Lease) as may be necessary or appropriate for the promotion of the safety, care or cleanliness of the Property or good order therein, and all such amendments or new rules shall be binding upon Tenant after five (5) business days' notice thereof to Tenant, provided that such amendments to the Rules do not material amend the terms of this Lease or Tenant's obligations hereunder. All of the Rules shall be applied on a non-discriminatory basis to all of the tenants of the Building, in a reasonable manner, and in a manner which shall not unreasonably interfere with Tenant's use or occupancy of the Premises for the purposes permitted under this Lease. Nothing herein shall be construed to give Tenant or any other person any claim, demand or cause of action against Landlord arising out of a violation of the Rules by any other tenant or occupant of, or visitor to, the Property unless a violation results in a Landlord Event of Default (as hereinafter defined).

**D. Entry and Exit from Building.** All persons entering or leaving the Building at any time may be required to identify themselves to a watchman by registering or otherwise to establish a right to enter or leave the Building. Landlord reserves the right to change the location of entrances to the Building, to make reasonable changes to the times specified above and the right to designate which entrances shall be used by Tenant.

## **ARTICLE 6**

### **Services and Utilities**

**A. Utilities and Services.** Landlord shall operate and maintain the Building and provide the following services and utilities in a manner comparable to the management and operation of other comparable office buildings in downtown Chicago (the "**Comparable Buildings**"). The cost of providing such utilities and services required to be provided by Landlord shall be included in Operating Expenses unless, to the extent expressly provided herein, all or a portion of such cost is to be paid by Tenant or borne by Landlord without reimbursement.

1. **HVAC.** Landlord shall provide heating, ventilation and air conditioning ("**HVAC**") to the Premises during the period from 8:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday, excluding holidays (the "**Normal Hours**") to provide the

temperature condition required by the International Energy Conservation Code, adopted by the State of Illinois effective January 1, 2013, as the same may be amended or replaced. Upon not less than one business day's prior written notice to Landlord, Landlord shall provide Tenant HVAC outside of Normal Hours in accordance with Landlord's normal charges for such after-hours services. With twenty-four (24) hours prior written notice to the Building's manager, after hours HVAC is available at a present rate of \$200.00 per hour for a partial or full floor up to one full floor, with additional floors added at a cost of \$25 per additional floor per hour. Charges are calculated based upon electricity usage of equipment and costs for labor to run and monitor systems and are subject to future increase.

2. **Electricity.** Landlord shall provide electricity to the Premises with capacity for 5 watts per square foot of power at 208/120 volts, 3-phase/4-wire, 60 hertz, A.C. Tenant's use of electricity provided by Landlord shall not exceed in voltage and rated capacity set forth above or the overall load that which is standard for the Building. Landlord shall have the right at any time and from time to time during the Term to contract for electricity service from such providers of such services as Landlord shall elect (each being an "**Electric Service Provider**"). Tenant shall cooperate with Landlord, and the Electric Service Provider, at all times and, as reasonably necessary, shall allow Landlord and such Electric Service Provider reasonable access to the Building's electric lines, feeders, risers, wiring, and any other machinery within the Premises. All electricity used by Tenant in the Premises shall, at Landlord's option, be paid for by Tenant as a separate charge as Additional Rent or billed by the Electric Service Provider and payable by Tenant directly to such Electric Service Provider. In the event Tenant shall request that it be allowed to consume electrical services in excess of Building standard, Landlord may refuse to consent to such usage or may consent upon such conditions as Landlord reasonably elects, and all such additional usage shall be paid for by Tenant as Additional Rent. Landlord, at any time during the Term, shall have the right to separately meter or sub-meter electrical usage for the Premises or to measure electrical usage by survey or any other method that Landlord, in its reasonable judgment, deems appropriate. Installation of any such meter or related mechanisms will be at Landlord's cost.

3. **Water.** Landlord shall provide water for drinking to the Premises, water for restrooms in the common areas of the Building, and, subject to Landlord's approval, water at Tenant's expense for any private restrooms and office kitchen in the Premises.

4. **Elevator Service.** Landlord shall provide (a) passenger elevator service, in common with other tenants or occupants of the Building at all times, and (b) upon request of Tenant, freight elevator service only during Normal Hours and subject to scheduling and Landlord's standard charge therefor. Landlord reserves the right to modify or terminate the use of any elevators in the Building or to designate specific elevators for the use of specific other tenants or occupants of the Building at any time and from time to time provided there remains reasonable passenger elevator service and freight elevator service to the Premises. Landlord's current standard freight elevator charge is \$120 per hour.

5. **Cleaning.** Landlord shall provide cleaning services to the Premises in accordance with the specifications attached hereto as Exhibit E.

**B. Additional Services.** Landlord may perform such additional services on such terms and conditions as may be mutually agreed upon in writing by Landlord and Tenant. All charges for such additional services shall be due and payable if stated on a Rent bill at the same time as the installment of Rent billed or, if billed separately, shall be due and payable within ten (10) days after such billing. In case Tenant shall fail to make payment for any such additional services, Landlord may, without notice to Tenant, discontinue any or all such additional services. If Tenant uses any services of Building after the Normal Hours, except as specifically otherwise provided herein, Tenant shall pay Landlord's normal and reasonable charges for such after hour services.

## C. No Warranty; Failure of Services.

### 1. Stoppage of Services.

a) Landlord does not warrant that any services or utilities (including without limitation, electrical service) will be free from Unavoidable Delays (as defined below) and Landlord reserves the right to stop any of the foregoing services or utilities when necessary by reason of: (i) an emergency; or (ii) repairs or alterations to the architectural, structural or mechanical systems of the Building, provided that Landlord notifies Tenant in writing of any such repairs or alterations which are not emergent in nature or are scheduled more than twenty-four (24) hours prior to the commencement of such work. Landlord shall not, however, except in an emergency, voluntarily effect any stoppage or reduction of any service without giving prior written notice to Tenant of the time and duration thereof. In case of any service stoppage or reduction arising out of, or the ending of which requires, any work by Landlord or any other person other than a utility company or governmental agency, Landlord shall prosecute such work (or cause such work to be prosecuted) diligently and continuously so as to minimize the duration of such service stoppage or reduction.

b) Except as herein expressly specified, no stoppage or interruption of services pursuant to the preceding paragraph shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or relieve Tenant from performance of Tenant's obligations under this Lease or entitle Tenant to any abatement of Rent. In no event shall Landlord be liable for damages by reason of loss of profits, business interruption or other consequential damages on account of such interruption in services or utilities.

c) "**Unavoidable Delays**" shall mean delays or interruptions to the extent caused by strikes or lockouts (except to the extent any such strike or lockout is attributable to the acts or omissions of the party claiming such delay, including the failure of such party to promptly initiate and diligently pursue all commercially reasonable steps to avoid such strike or lockout), failure of power (except to the extent such failure has been caused by the acts or omissions of the party claiming the delay), failure of any utility provider to timely complete service connections (but only with respect to delays relating to that particular utility and provided that such delays do not arise out of the failure of the party claiming the delay to timely schedule such service connections or delinquency with respect to any payment to such utility company or other cause within such party's reasonable control), conditions of supply or demand which are affected by war or other national, state or municipal emergency, restrictive governmental laws or regulations not in effect as of the date of execution of this Lease, condemnations, riots, insurrections, war, fire or other casualty, unforeseen weather conditions, or acts of God, or other unforeseeable reasons not within the reasonable control of the party. Notwithstanding the foregoing, reasons such as and including lack of money, financial inability, failure to perform of any contractor, agent, vendor or consultant of the party (except as expressly provided in this Section) claiming such delay, delays in applying for or obtaining permits for construction or occupancy, reasonably foreseeable governmental action or inaction or failure to order long-lead items sufficiently in advance of the time needed shall not be Unavoidable Delays. Each party agrees to notify the other party within ten (10) days after it has actual knowledge of the existence of the Unavoidable Delay(s) specifying the nature and estimated length thereof. If any party shall fail to give notice within the time period set forth above, such party shall not be entitled to claim any such delay as an Unavoidable Delay.

**2. Failure of Services.** Notwithstanding anything herein to the contrary:

a) If any failure or interruption of any service or utility to be provided to Tenant hereunder by Landlord shall result in any portion of the Premises being unusable (as hereinafter defined) (such failure or interruption, a **“Critical Failure”**), and if such Critical Failure continues for more than five (5) calendar days (irrespective of whether such Critical Failure is caused by Unavoidable Delay), commencing on the sixth (6<sup>th</sup>) calendar day after Tenant ceases to use such portion of the Premises for the normal conduct of its business due to such Critical Failure, all Rent payable hereunder with respect to such portion of the Premises shall abate until the next calendar day following restoration of the applicable service or utility.

b) Notwithstanding any of the foregoing provisions of this Section, if any failure or interruption of service is due to a fire or other casualty, is caused by Tenant or involves a service not being provided to Tenant by Landlord hereunder, the remedies provided for in this Section shall not apply.

c) The remedies expressly set forth in this Lease shall constitute Tenant’s sole and exclusive remedies with respect to any failure or interruption of any service that Landlord is obligated hereunder to provide, and Tenant hereby waives any and all other rights or remedies it may have at law or in equity in connection with the same.

**ARTICLE 7**  
**Alterations and Liens**

**A. Alterations.**

1. Except to the extent expressly set forth herein, Tenant shall have no right to make additions, changes, alterations or improvements (**“Alteration Work”**) to the Premises. Upon twenty (20) days prior written notice to Landlord, Tenant may perform Alteration Work, which does not constitute a Major Alteration (defined below) and is strictly cosmetic and non-structural, such as painting, wall coverings and floor coverings (collectively, **“Decorative Alterations”**). As used herein, a **“Major Alteration”** is any Alteration Work that either (a) requires the issuance of a building permit from the City of Chicago; (b) affects the structure, exterior or exterior appearance of the Premises or the Building; (c) affects the views of the interior of the Building from any common area of the Building or the exterior of the Building; (d) affects the Building’s electrical, HVAC, communication risers, mechanical and plumbing systems and equipment (collectively **“Building Systems”**); (e) affects other tenants or occupants of the Building in any material way, as reasonably determined by Landlord; or (f) affects space outside of the Premises.

2. Prior to the commencement of its performance of any Alteration Work, Tenant shall submit to Landlord in writing: (a) complete architectural and engineering working drawings and specifications (the **“plans and specifications”**) therefor (unless such Alteration Work is only Decorative Alterations), (b) a statement from an engineer reasonably approved by Landlord (acting reasonably) stating that the Alteration Work will not adversely affect any Building Systems or the structure of the Property (unless such Alteration Work is only Decorative Alterations); and (c) a detailed description of the proposed Alteration Work. When required, Landlord shall give or withhold its consent within ten (10) days after Tenant’s submission of all materials required under this Section. To the extent any aspect of an Alteration Work affects only the appearance or configuration of the Premises, Landlord’s consent to such aspect shall not be unreasonably

withheld or conditioned. Prior to the commencement of its performance of any Alteration Work (including but not limited to Major Alterations), Tenant shall submit to Landlord copies of all permits required by applicable Laws (if any), certificates of insurance from all contractors and subcontractors naming the Landlord Protected Parties (as hereinafter defined) as additional insureds, and the identities of all architects, engineers, contractors, subcontractors and suppliers to be utilized with respect to such Alteration Work to the extent such contracts or subcontracts have been executed and/or such architects, engineers, contractors, subcontractors and suppliers have been identified.

3. Upon the completion of any Alteration Work, Tenant shall deliver to Landlord unconditional final lien waivers for all work, services and materials incorporated into such Alteration Work, affidavits listing all contractors, subcontractors and suppliers involved in such Alteration Work, "as built" or marked record set drawings for all Major Alterations, a certificate of substantial completion from Tenant's architect or engineer (if applicable), and, to the extent applicable and required, all certificates or other evidence issued by applicable governmental authorities indicating final approval of such Major Alterations or other Alteration Work.

4. All Alteration Work shall be designed by engineers and architects selected by Tenant and shall be performed by contractors, subcontractors and suppliers selected by Tenant (other than that portion of any Alteration Work involving connections to the Building Systems, which shall be performed at Tenant's expense by a contractor designated by Landlord in its sole but reasonable discretion provided that the rates charged to Tenant are the same rates charged to Landlord for similar services). Landlord shall have the right to approve such engineers, architects, contractors, subcontractors and suppliers but such approval shall not be unreasonably withheld, conditioned or delayed. All engineers, architects, contractors, subcontractors and suppliers retained in connection with the Alteration Work shall be duly licensed if and to the extent required and shall perform the tasks for which they are retained in a good, worker like manner so as to maintain harmonious labor relations in the Building and not create any work stoppage, picketing or labor dispute. All materials used in connection with the Alteration Work shall be of a quality comparable to or better than those materials used in the initial construction of the Premises and, in the case of a Major Alteration, shall comport, in all material respects, with the plans and specifications approved by Landlord. During Tenant's performance of any Alteration Work and upon at least forty-eight (48) hours prior notice to Tenant, Landlord shall have the right to inspect same to confirm compliance with the terms and conditions of this Article and, except with respect to Decorative Alterations, with the plans and specifications delivered to and approved by Landlord pursuant to this Article 7.

5. All Alteration Work shall comply with all applicable Laws, the Rules and all of Landlord's reasonable requirements relating to work at the Building regarding insurance, access to the Premises and Building, life safety and protection of property.

6. Tenant shall not be required to pay a supervision fee to Landlord in connection with any Alteration Work, but Tenant shall reimburse Landlord for the actual, reasonable out-of-pocket costs and expenses paid by Landlord to third parties to review any plans and specifications for, or inspection of, any Alteration Work pursuant to Section 7(A)(4) hereof.

7. If Landlord consents to any Alteration Work, the same shall not be deemed a warranty as to the adequacy of the design, workmanship or quality of materials to be used therein, and Landlord hereby expressly disclaims any responsibility or liability for same. Landlord shall under no circumstances have any obligation to repair, maintain, or replace any portion of the Alteration Work unless the need for such repair, replacement or maintenance is due to or arises from the negligence or willful misconduct of Landlord, its agents, employees, contractors or subcontractors.



8. If at any time Tenant proposes to make any Major Alteration or to run cabling, wires or other associated equipment within any risers, conduits, shafts, pipes or ducts in the Building, whether as part of Initial Tenant Work or thereafter during the Term, Landlord shall advise Tenant in writing, at the time that Landlord consents thereto if it is being done as part of a Major Alteration or, within ten (10) business days after Tenant's request, if it is not being done as part of a Major Alteration, whether or not Tenant will be required, at Tenant's expense, to remove such Major Alteration and/or cabling, wires and associated equipment upon expiration of the Term or earlier termination of this Lease. If Landlord fails to expressly consent to such removal or respond to Tenant's request in a timely fashion, Landlord will be deemed to have elected that Tenant will not be required to remove such Major Alteration, and/or any cabling, wires and associated equipment upon the expiration of the Term or earlier termination of this Lease. Any Major Alteration and/or cabling, wires, and associated equipment that Landlord requires (or deemed to have required) Tenant to remove in accordance with this Section shall be removed by Tenant, at Tenant's cost, at or prior to the expiration of the Term or earlier termination of this Lease and Tenant shall repair any damage to the Premises or the Building caused by such removal. Without limiting the foregoing, Tenant shall be required, at Tenant's cost, at or prior to the expiration of the Term to remove any cabling, wires and associated equipment to the extent such removal is required by applicable building codes and other Laws, even if the right to request such removal has not been reserved by Landlord.

9. Except to the extent expressly specified in this Article, Initial Tenant Work shall not be deemed Alteration Work.

**B. Liens.** Tenant shall keep the Property and Premises free from any mechanic's, materialman's or similar liens or encumbrances filed in connection with any Alteration Work performed by Tenant or by anyone (other than Landlord or any affiliate thereof) performing such Alteration Work on behalf or at the request of Tenant and, if any such lien or encumbrance shall be filed, Tenant shall remove any such lien or encumbrance or provide title insurance or bond covering such lien or encumbrance in a form reasonably satisfactory to Landlord within ten (10) business days after Tenant's receipt of notice from Landlord with respect to the existence of such lien or encumbrance. If Tenant shall fail to timely remove, or provide such insurance against or bond over, any such lien or encumbrance, after prior written notice to Tenant that Landlord is intending to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof, and Tenant shall indemnify and hold Landlord harmless from and against any claims, liabilities, judgments and costs (including reasonable attorneys' fees) arising out of Tenant's failure to so remove, insure against or bond over any such liens or encumbrances. The amount paid by Landlord to remove any such lien or encumbrance or otherwise due pursuant to the foregoing indemnity shall be deemed Additional Rent and shall be payable within thirty (30) days after demand.

## **ARTICLE 8**

### **Repairs**

#### **A. Tenant's Obligations.**

1. Except for: (i) the cleaning and trash removal provided by Landlord pursuant to Article 6 hereof; (ii) Landlord's obligation to repair and maintain certain portions and elements of the Building as set forth in Section 8(B) hereof; (iii) Landlord's obligation to repair any damage due to or arising from any acts, omissions or negligence of Landlord or its agents, employees, contractors or subcontractors; (iv) Landlord's obligations with respect to repairs necessitated by fire or other casualty or condemnation pursuant to Articles 9 and 11 hereof; and (v) Landlord's obligation to comply with Laws as set forth in Section 5(B) hereof, Tenant shall keep the Premises in good and sanitary condition, working order and repair, ordinary wear and tear excepted,

(including, without limitation, carpet, wall-coverings, doors, plumbing and other utility systems or equipment (including private restrooms)), installed for Tenant's exclusive use as part of Initial Tenant Work or any Alteration Work. In the event that any repairs, maintenance or replacements in the Premises are required, Tenant shall promptly arrange for the same either through (at Tenant's election): (a) Landlord for such reasonable charges as Landlord may from time to time establish; (b) such contractors as Landlord generally uses at the Property; or (c) such other contractors as Landlord shall first approve in writing (acting reasonably). All repairs, maintenance and replacements shall be performed in a first class, worker like manner. Tenant, with its employees or contractors of its choosing, subject to maintaining labor harmony, may perform all work within the Premises related to painting, furniture moving, light bulb replacement, millwork maintenance, picture hanging and similar minor decorating work without obtaining Landlord's prior consent and without prior notice to Landlord.

2. Subject to the provisions of Section 10(C) hereof, if any damage to the Building outside of the Premises or to any equipment or appurtenance thereto or any part thereof results from any negligent act or omission, willful misconduct or breach of Tenant's obligations under this Lease of or by Tenant or its contractors, subcontractors, agents or employees, Landlord may, at Landlord's option and subject to the provisions of Section 22(F) hereof, make such repairs and replacements or undertake such maintenance at Tenant's cost and expense.

**B. Landlord's Obligations.** Landlord shall keep: (i) the common areas of the Building; (ii) elevators serving the Premises; (iii) the roof of the Building; (iv) exterior plate glass; (v) public restrooms and restrooms used by Tenant in common with other tenants of the Building; (vi) structural elements; (vii) those mechanical, electrical and communications systems, equipment and risers serving the Premises except those systems, equipment and risers installed as part of Initial Tenant Work or Alteration Work for Tenant's exclusive use; (viii) those heating, ventilating and air conditioning systems or equipment serving the Premises except those systems and equipment installed as part of Initial Tenant Work or Alteration Work for Tenant's exclusive use; and (ix) those plumbing and other utility systems or equipment serving the Premises except those systems and equipment installed as part of Initial Tenant Work or Alteration Work for Tenant's exclusive use, in good and sanitary working order, condition and repair, in compliance with all Laws (the cost of which shall be included in Operating Expenses to the extent permitted by Article 3 hereof). Subject to the provisions of Section 10(C) hereof, if any damage to the Premises or to any equipment therein or appurtenance thereto or any part thereof results from any negligent act or omission or willful misconduct by Landlord or its contractors, subcontractors, agents or employees or from the breach of Landlord's obligations under this Lease, Landlord shall undertake at its sole cost and expense all repairs and replacements that are required to address such damage. No promises of Landlord to alter, remodel, improve, repair, decorate or clean the Property or any part thereof have been made, and no representation respecting the condition of the Property or any part thereof has been made to Tenant by or on behalf of Landlord except to the extent expressly set forth in this Lease.

**C. Minimization of Interference.** Whenever Landlord or any person authorized by Landlord shall perform any work required under Section 8(B) hereof, Landlord shall do so, or shall cause such person to do so, diligently and in such a manner as shall minimize interference with Tenant's conduct of its business, provided that this sentence shall not require Landlord to incur additional costs for labor at overtime or premium rates unless such work is necessitated by any negligent act, omission or willful misconduct by Landlord or its contractors, subcontractors, agents or employees or by the breach of Landlord's obligations under this Lease.

**D. Casualty or Condemnation Events.** The provisions of this Article shall not apply in the case of fire or other casualty or condemnation, in which case Article 9 or Article 11 hereof, as the case may be, shall control.

**ARTICLE 9**  
**Casualty Damage**

**A. Casualty.**

1. If the Building or any part of the Property providing access thereto shall be damaged by fire or other occurrence, Landlord shall repair and restore the same unless this Lease is terminated by Landlord or Tenant pursuant to the provisions of this Article. Such restoration of the Building or the Property shall be to substantially the condition existing immediately prior to the fire or other occurrence, except for modifications required by zoning and building codes and other Laws, and except that Landlord shall not be required to repair or replace any of Tenant's furniture, furnishings, movable fixtures, equipment, or personal property or any special installations in the Premises (collectively, "**Tenant's Property**") or any portion of Initial Tenant Work or any Alteration Work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided that Landlord shall make such repairs and restoration diligently, promptly (given the nature of the damage to be repaired) and in such a manner as to not, to the extent practicable, unreasonably interfere with Tenant's conduct of its business elsewhere in the Premises. Landlord shall not be required to do such repair or restoration work on an overtime or premium time basis.

2. Landlord shall, within sixty (60) days after the occurrence of any damage to the Building and/or the Property or destruction thereof or thereto resulting from a fire or other occurrence, deliver to Tenant a notice (an "**Anticipated Completion Date Notice**") accompanied by the written opinion of a qualified, experienced and reputable architect not affiliated with Landlord (hereinafter referred to as the "**Casualty Consultant**"), of: (a) the date by which Landlord anticipates being able to substantially complete the repair and restoration of the Building and/or the Property, as applicable, based on good construction practices and without employing labor at overtime or other premium rates, and including reasonably anticipated periods for insurance claim processing and adjustments (the "**Anticipated Completion Date**"); and (b) the period of time required for Tenant to commence and diligently prosecute to completion the repair and restoration of Initial Tenant Work and any other Alteration Work and/or Tenant's Property to substantially the condition existing immediately prior to the fire or other occurrence based on good construction practices and without employing labor at overtime or other premium rates ("**Tenant's Completion Period**").

3. If the Building shall be so damaged or destroyed by fire or other occurrence (whether or not the Premises are damaged or destroyed) such that: (a) it will require a reasonably estimated expenditure of more than twenty percent (20%) of the full insurable value of the Building immediately prior to the fire or other occurrence; or (b) it will take more than nine (9) months to repair or rebuild the portion of the Building so damaged or destroyed, then in either such case Landlord may terminate this Lease by giving Tenant notice to such effect at the same time that Landlord delivers the Anticipated Completion Date Notice.

4. If: (a) more than twenty percent (20%) of the Rentable Area of the Premises is rendered unusable by such fire or other occurrence and (b) either (i) the Anticipated Completion Date set forth in the Anticipated Completion Date Notice is later than nine (9) months after the date of such fire or other occurrence; or (ii) the fire or other occurrence occurs during the last twelve (12) months of the Term and the Anticipated Completion Date set forth in the Anticipated Completion Date Notice is later than the earlier of the Expiration Date or sixty (60) days after the date of such fire or other occurrence, Tenant may elect to terminate this Lease by delivering to Landlord a notice within forty-five (45) days after Tenant receives the Anticipated Completion Date Notice (or within ninety (90) days after the date of such damage or destruction if Landlord shall fail timely to give the Anticipated Completion Date Notice), specifying the date for the termination of this Lease.

5. As used herein, any portion of the Premises shall be deemed “**unusable**” if: (a) such portion of the applicable space is unusable for the normal conduct of Tenant’s business, including, without limitation, any elevator service or inability to use such portion of the Premises as a result of any interruption of electricity, water, HVAC or any other service to be provided by Landlord under this Lease, or any interruption in Tenant’s telecommunications services (including, without limitation, data line, servers, telephone lines or other central or critical components of Tenant’s telecommunications systems), in each case serving such portion of the Premises; or (b) there is no reasonably safe method of ingress to or egress from such space. Any portion of the Premises that is unusable is sometimes hereinafter referred to as the “**Untenantable Space**”.

**B. Repair and Restoration.** Unless this Lease is terminated as provided in Section 9(A) hereof, Landlord shall proceed with reasonable diligence and promptness, given the nature of the damage to be repaired, to repair such damage and restore the Building, all subject to Unavoidable Delays. Notwithstanding any provision in this Lease to the contrary, Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair, restoration or rehabilitation of any portion of the Premises or the Building as a result of any damage from fire or other occurrence.

**C. Rent Abatement.** If the damage or destruction resulting from any fire or other occurrence renders all or any portion of the Premises unusable and if this Lease shall not be terminated pursuant to the foregoing provisions of this Article, Base Rent and all other Rent (including without limitation Tenant’s Tax Payment and Tenant’s Operating Expense Payment) allocable to the Untenantable Space shall abate for the period commencing on the date the Premises or such portion thereof becomes unusable and Tenant ceases to use such space for the normal conduct of its business and continuing until the earlier of: (i) the date on which Tenant shall reoccupy such space for the normal conduct of its business, and (ii) the period of time equal to Tenant’s Completion Period as the same may be extended pursuant to periods of Unavoidable Delays. Notwithstanding the foregoing, if Tenant reoccupies any portion of the Untenantable Space for the continuous, normal conduct of its business, such abatement shall end with respect to such portion of the Untenantable Space.

**D. Rent Adjustments.** If this Lease is terminated pursuant to this Article: (i) Rent shall be apportioned on a per diem basis and be paid to the date of the fire or other occurrence with appropriate adjustment for any portion of the Premises that Tenant continuously occupied for the normal conduct of Tenant’s business from the date of the fire or other occurrence until said termination, and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant within thirty (30) days after the termination of this Lease; and (ii) upon the date specified in any notice terminating this Lease, this Lease shall expire and terminate as fully and completely as if such date were the date set forth for the expiration of this Lease.

**E. Restoration of Tenant’s Work.** If this Lease is not terminated pursuant to this Article as a result of such a fire or casualty, Tenant, at its expense, and whether or not its insurance proceeds will be sufficient for such purpose, shall proceed with reasonable diligence to repair, reconstruct or replace the Initial Tenant Work and any Alteration Work.

**F. Sole Remedies.** Landlord and Tenant agree that Landlord’s obligation to restore the Building, Tenant’s obligation to restore the Initial Tenant Work and Alteration Work, the abatement of Rent provided herein and Landlord’s and Tenant’s rights to terminate this Lease, all as set forth in this Article, shall be each party’s sole recourse in the event of damage to or

destruction of the Premises, the Building and/or the Property by fire or other occurrence, and each of Landlord and Tenant waive any other rights either party may have under any applicable Law to terminate this Lease by reason of damage to the Premises or the Property.

## ARTICLE 10

### Insurance, Subrogation, and Waiver of Claims

#### A. Tenant's Insurance.

1. Tenant, at its sole cost and expense, shall maintain in force and effect: (a) commercial property insurance covering, at a minimum, the perils insured under the ISO special cause of loss form, which provides "all risk" coverage, with respect to: (i) Initial Tenant Work and any Alteration Work, together with any other fixtures installed by or on behalf of Tenant in the Building, including, but not limited to, special wall and floor coverings, special lighting fixtures, built-in cabinets and bookshelves; and (ii) Tenant's inventory, contents, furniture, equipment and other personal property of Tenant located in the Premises, in each case for not less than the full replacement cost of such property; (b) commercial general liability insurance covering liability arising in respect of the Premises and the conduct or operation of Tenant's business therein for bodily injury, property damage, advertising injury and personal injury, including products/completed operations and liability assumed under an insured contract (including tort liability of another assumed in a business contract) on an occurrence basis and, to the extent applicable, host liquor liability insurance, with limits of not less than \$5,000,000 combined single limit for bodily injury (including death), or damage or injury to or destruction of property (including the loss of use thereof) for any one occurrence, and in the aggregate, with the aggregate applicable on a per location basis, provided that a portion of such commercial general liability insurance may be provided through an umbrella or excess liability policy so long as at least \$2,000,000 of primary coverage is carried by Tenant; (c) workers' compensation insurance to the extent required by Laws, together with Employers Liability limits of not less than \$1,000,000 per accident and per illness; (d) automobile liability insurance insuring all owned and non-owned and hired automobiles with limits of liability of not less than \$1,000,000 for bodily injury and property damage; and (e) business interruption and/or extra coverage as part of its commercial property insurance (provided that in no event shall Landlord be liable for any business interruption or other consequential loss sustained by Tenant, whether or not it is insured by Tenant, even if such loss is caused by the negligence of Landlord, its employees, officers, directors or agents). Landlord may periodically require that Tenant reasonably increase the aforementioned coverages and limits of liability on a basis consistent with the insurance required to be maintained by comparable tenants in the Comparable Buildings.

2. Tenant's commercial general liability policy shall include Landlord, those of its members of whose identity Tenant has received notice, from time to time, their respective directors, officers, employees and agents (including the Building's managing agent) and any mortgagees of the Building whose names and addresses shall have been previously provided to Tenant (the "**Landlord Protected Parties**") as additional insureds and the insurance shall be primary to and non-contributory with any insurance maintained by such additional insureds.

3. Tenant shall deliver to Landlord certificates of insurance evidencing such coverage (and showing the Landlord Protected Parties as additional insureds) prior to taking possession of the Premises (including any possession to perform any Initial Tenant Work). Thereafter, Tenant shall endeavor to deliver to Landlord certificates of insurance evidencing Tenant's insurance coverage (and showing Landlord Protected Parties as additional insureds) at least thirty (30) days prior to the expiration date of any such policy and shall deliver such certificate, in any event, at least ten (10) days prior to such expiration date. All such insurance policies shall contain a provision that the insurer will endeavor to provide at least thirty (30) days prior written notification to Landlord prior to cancellation of such policies.

**B. Landlord's Insurance.** Landlord agrees to purchase and keep in force and effect: (i) policies of insurance covering loss or damage to the Building and that portion of the tenant improvements therein paid for by Landlord (specifically excluding, however, the cost of any Initial Tenant Work and any other tenant improvement work or Alteration Work in the Premises) in an amount and in form and substance (including applicable deductibles) reasonably acceptable to Landlord and its mortgagee, and (ii) commercial general liability insurance applicable to the Building and the common areas in amounts and coverages and deductibles as reasonably determined by Landlord and any mortgagee of Landlord.

**C. General Provisions of Insurance.**

1. Except as provided herein to the contrary, any insurance carried by Landlord or Tenant shall be for the sole benefit of the party carrying such insurance (or its assignee). Any insurance policies required hereunder may be "blanket policies" and/or umbrella policies issued to, as applicable: (x) Tenant and covering the Premises and other properties owned or leased by Tenant or its Affiliates; or (y) Landlord and covering the Building and/or the Property and other properties owned or leased by Landlord or its Affiliates, provided that such policies otherwise; (a) comply with the provisions of this Lease; (b) expressly allocate to the Premises, the Building and/or the Property, as applicable, the specified coverage, without possibility of reduction of the amounts payable with respect to the Premises, the Building or the Property, as applicable, below the levels required by this Article, except that, with respect to Landlord's commercial property insurance, such policies may contain a per occurrence loss limit that is less than the aggregate full replacement cost of all properties insured thereunder so long as such per occurrence loss limit is not less than the coverage required hereunder with respect to the Building. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, the party maintaining such blanket or umbrella policy shall furnish to the other from time to time upon request reasonable evidence of valid current coverage; provided that any person or persons receiving or reviewing such evidence of insurance on behalf of the requesting party shall by so doing be deemed to have agreed to hold same in confidence, provided that such person may disclose such information to Tenant or Landlord, any persons within such person's organization, and such other parties as may be reasonably necessary to determine whether such blanket or umbrella policy satisfies the terms and conditions of this Lease.

2. All insurance required hereunder shall be provided by insurers that are licensed and approved to conduct business in Illinois or authorized to write insurance in Illinois with a minimum Best rating of "A-VII" or "Excellent" or the equivalent.

3. Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible or self-insured amount shall be treated as though it were recoverable under such policies.

4. Landlord agrees that, if obtainable, it will include in its commercial property insurance and commercial general liability insurance policy or policies appropriate clauses pursuant to which the insurance companies: (a) waive all right of subrogation against Tenant and its subtenants and assigns with respect to losses payable under such policies, notwithstanding that such losses may result from the negligence or fault of Tenant, its servants, agents, employees, subtenants or assigns; and (b) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies. Landlord further waives any claims it may have against Tenant to recover from

Tenant (except to the extent a portion thereof is includable in Operating Expenses under Article 3) any deductible or self-insured amounts required to be paid by Landlord under such policy or policies notwithstanding that such amounts may have been payable as a result of the negligence or fault of Tenant, its servants, agents or employees.

5. Tenant agrees that, if obtainable, it will include in its commercial property insurance and commercial general liability insurance policy or policies appropriate clauses pursuant to which the insurance companies: (a) waive the right of subrogation against Landlord and any other tenant of space in the Building with respect to losses payable under such policy or policies notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and/or the servants, agents or employees thereof; and (b) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. Tenant further waives any claims it may have against Landlord to recover from Landlord any deductible or self-insured amounts required to be paid by Tenant under such policy or policies notwithstanding that such amounts may have been payable as a result of the negligence or fault of Landlord, its servants, agents or employees.

6. Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to this Section cannot be obtained. Landlord and Tenant hereby also agree to notify each other promptly of any cancellation or change of the terms of any such policy which would affect such clauses.

7. Upon request from the other party from time to time, Landlord and Tenant shall provide the requesting party with a certificate of insurance or other reasonable evidence that Landlord or Tenant, as applicable, has in place the insurance required of it hereunder.

## **ARTICLE 11**

### **Condemnation**

**A. Total Taking.** If the whole of the Premises shall be lawfully taken or condemned by any governmental authority for any public or quasi public use or purpose, upon the date of title vesting in such proceeding, the Term shall terminate as fully and completely as if such date were the date set forth herein for the expiration of this Lease and Tenant shall forthwith quit, surrender and vacate the Premises without prejudice however to each of Landlord's and Tenant's rights and remedies against each other for any obligations under the provisions of this Lease which accrued prior to such termination, and any Rent owing shall be paid up to such date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant within thirty (30) days after the termination of this Lease.

**B. Partial Taking.** If only a part of the Premises shall be so taken or condemned (such part being hereinafter the "Partial Taking Premises"): (1) upon the date of title vesting in such proceeding, the Term shall terminate with respect to the Partial Taking Premises and Tenant shall forthwith quit, surrender and vacate the Partial Taking Premises without prejudice, however, to each of Landlord's and Tenant's rights and remedies against the other for any obligations under the provisions of this Lease in effect with respect to the Partial Taking Premises which accrued prior to such termination, and any Rent owing in respect of the Partial Taking Premises shall be paid up to such date and any payments of Rent in respect of the Partial Taking Premises made by Tenant which were on account of any period subsequent to such date shall within thirty (30) days after the termination of this Lease with respect to the Partial Taking Premises be returned to Tenant; and (2) except as provided in Section 11(C) below, this Lease shall continue in full force and effect with respect to the balance of the Premises and from and after the date of such taking the Rent shall be reduced by the amount attributable to the Partial Taking Premises.

**C. Termination Rights.** If the Partial Taking Premises shall be more than twenty percent (20%) of the Premises, or if any other portion of the Building or the Land shall be taken or condemned which causes more than twenty percent (20%) of the Premises to be untenable, Tenant shall have the right to terminate this Lease by giving to Landlord, within sixty (60) days following the date on which Tenant shall have received notice of the vesting of title, notice specifying a date for the termination thereof. Upon the date specified in such notice the Term shall terminate as fully and completely as if such date were the date set forth herein for the expiration of this Lease, and Tenant shall forthwith quit, surrender and vacate the Premises without prejudice, however, to each of Landlord's and Tenant's rights and remedies against the other under the provisions of this Lease in effect prior to such termination. Any Rent owing shall be paid up to such date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant within thirty (30) days after the termination of this Lease.

**D. Interest in Awards.** Notwithstanding any termination of the Lease, in the case of either a partial or complete taking or condemnation of the Premises, Tenant shall have the right to make an independent claim to the condemning authority for (i) Tenant's moving expenses (if available under applicable Law), and (ii) Tenant's personal property, trade fixtures and equipment, provided that Tenant is entitled pursuant to the terms of this Lease to remove such property, trade fixtures and equipment at the end of the Term. Tenant shall have no right to make any such claim with respect to the value of the unexpired portion of the Term of this Lease or the Initial Tenant Work or the Alteration Work, all of which shall be deemed to be Landlord's property

**E. Temporary Taking.** If the temporary use or occupancy of all or any part of the Premises shall be lawfully taken or condemned by any governmental authority for any public or quasi-public use or purpose during the Term (any such taking being herein called a "**temporary taking**"), then (i) this Lease shall be and remain unaffected by such taking, except that Base Rent and Additional Rent shall be proportionately abated with respect to the period for which all or any portion of the Premises is so taken, (ii) Tenant shall be entitled, except as hereinafter set forth, to receive that portion of the award for such temporary taking which represents compensation for the use and occupancy of the Premises (except to the extent that Base Rent and Additional Rent shall have been abated), for the temporary taking of any improvements to the Premises made by or at the direction of Tenant, Tenant's personal property, trade fixtures and equipment and for moving expenses and (iii) Landlord shall be entitled to receive that portion of the award, if any, for such temporary taking which represents reimbursement for the rental abatement given Tenant as a result of such temporary taking and for the cost of restoring the Premises, but only to the extent Landlord is obligated to pay such cost, pursuant to Section 11(F) hereof. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award which represents compensation for the use and occupancy of the Premises (or a part thereof) shall be divided between Landlord and Tenant so that Tenant shall receive so much thereof as represents the period up to and including such Expiration Date and Landlord shall receive so much thereof as represents the period after such Expiration Date.

**F. Restoration.** If any part of the Building or the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose (including, without limitation, any temporary taking) and this Lease is not terminated as a result thereof, (i) Landlord, at its expense shall proceed with reasonable diligence to repair any damage to any portion of the Building not so taken and restore such portion of the Building to substantially its former condition, to the extent that the same may be feasible and so as to constitute an architecturally complete Building and cause the Premises to be ready for the installation of tenant improvements, and to enable Tenant to occupy the Premises, subject to completion therein of any required restoration of Initial Tenant Work and any other tenant improvement work or Alteration Work in the Premises by Tenant, and (ii) Tenant, at its expense, and whether or not any award or awards will be sufficient



for the purpose, shall proceed with reasonable diligence to repair any damage to any portion of the Initial Tenant Work not so taken and restore such portion of the Initial Tenant Work to substantially its former condition, to the extent that the same may be feasible.

## **ARTICLE 12**

### **Return of Possession**

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall surrender possession of the Premises in good condition, ordinary wear and tear and damage by fire, other occurrence or condemnation which Tenant is not obligated to repair excepted, and shall surrender all keys and any key cards, to Landlord, and advise Landlord as to the combination of any locks or vaults then remaining in the Premises, and shall remove all of Tenant's trade fixtures and personal property. All improvements and fixtures in or upon the Premises (except trade fixtures and personal property belonging to Tenant and except Alteration Work that is so removed by Tenant prior to the termination or expiration of this Lease) that are not removed by Tenant prior to the termination or expiration of this Lease, whether installed by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant. Any trade fixtures and personal property of Tenant not removed from the Premises on or before the expiration or earlier termination of the Term shall be conclusively presumed to have been abandoned and conveyed by Tenant to Landlord without payment by Landlord or warranty of representation by Tenant unless Tenant removes such items within ten (10) days after demand therefor by Landlord. Notwithstanding anything to the contrary contained herein, any and all leasehold improvements which are a part of Initial Tenant Work or any Alteration Work shall be the property of Landlord and shall not be removed by Tenant upon surrender of possession of the Premises, except to the extent removal of any portion of Initial Tenant Work or Alteration Work is required as provided in Article 7. Except as expressly provided to the contrary in this Article 12 or in Article 7 Tenant shall have no obligation to pay any amounts to Landlord for the demolition, removal or restoration of the leasehold improvements in the Premises following the expiration or termination of this Lease.

## **ARTICLE 13**

### **Holding Over**

Unless Landlord expressly agrees otherwise in writing, if Tenant shall retain possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, Tenant shall pay Landlord (i) for the first sixty (60) days of such holding over, one hundred fifty percent (150%) of the Base Rent and Additional Rent applicable immediately prior thereto and (ii) for the period from and after the sixty-first (61<sup>st</sup>) day of such holding over, two hundred percent (200%) of such Base Rent and Additional Rent, in each case prorated on a per diem basis for each day of such holding over. In addition, if such holding over exceeds sixty (60) days, Tenant shall also be liable to Landlord for all direct and/or consequential damages, costs and expenses incurred as a result of such holdover, including without limitation any losses from Landlord's inability to timely fulfill its obligations to any subsequent tenants of the Premises or portions thereof. The foregoing provisions shall not serve as permission for Tenant to holdover, nor serve to extend the Term (although after commencement of said holdover Tenant shall remain bound to comply with all provisions of this Lease until Tenant vacates the Premises, and shall be subject to the provisions of Article 12 hereof). Tenant shall not be entitled to any renewal, right of first offer or expansion rights contained in this Lease or in any amendments hereto during any such holdover period. The provisions of this Section shall not operate as a waiver by Landlord of any right of re-entry herein provided.

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## **ARTICLE 14**

### **No Waiver**

No provision of this Lease will be deemed waived by either Landlord or Tenant unless such waiver is express and is set forth in a written document signed by Landlord or Tenant, as the case may be. No waiver shall be implied by delay or any other act or omission of either Landlord or Tenant. No waiver by either Landlord or Tenant of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the consent or approval of Landlord or Tenant, as applicable, respecting any action by Tenant or Landlord, as applicable, shall not constitute a waiver of any requirement for obtaining the consent or approval respecting any subsequent action. Payment of Rent by Tenant or acceptance thereof by Landlord shall not constitute a waiver of any breach by Landlord or Tenant, as applicable, of any term or provision of this Lease. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. The acceptance of Rent or of the performance of any other term or provision from any person or entity other than Tenant, including any Transferee (as hereinafter defined), shall not constitute a waiver of any right that Landlord may have hereunder to approve any Transfer (as hereinafter defined).

## **ARTICLE 15**

### **Attorneys' Fees and Jury Trial**

In the event of any litigation between Landlord and Tenant, the prevailing party shall be entitled to obtain, as part of the judgment, all reasonable attorneys' fees, costs and expenses incurred in connection with such litigation, except as may be limited by applicable Law. In the interest of obtaining a speedier and less costly hearing of any dispute, Landlord and Tenant hereby each irrevocably waive the right to trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises.

## **ARTICLE 16**

### **Personal Property Taxes, Rent Taxes and Other Taxes**

Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against or levied upon Tenant's fixtures, furnishings, equipment and personal property located in the Premises. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord. In the event any such items shall be assessed and billed with the property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within thirty (30) days after Landlord delivers to Tenant a statement and a copy of the assessment or other documentation showing the amount of such impositions applicable to Tenant's property. Tenant shall pay any sales tax, service tax, transfer tax, value added tax, or any other applicable tax on the services herein or otherwise respecting this Lease, to the extent such taxes are not included in Taxes or Operating Expenses pursuant to Article 3 hereof, provided that in no event will Tenant pay any taxes attributable to any income received by Landlord or any other taxes or impositions on Landlord or the Building to the extent such taxes or impositions are expressly excluded from Taxes and Operating Expenses pursuant to Article 3 hereof.

**ARTICLE 17**  
**Entry by Landlord**

Landlord may enter the Premises at all reasonable times (and Tenant shall have the right to have its representative present) as long as Landlord provides Tenant with reasonable prior notice thereof of at least one business day (except in the case of an emergency in which case Landlord shall attempt to notify Tenant as promptly as practicable but no notice shall be required) and coordinates such entry with Tenant so as not to unreasonably disrupt Tenant's business to: (A) inspect the same; (B) exhibit the same to prospective purchasers, mortgagees or tenants; (C) supply janitorial and other services to be provided by Landlord to Tenant under this Lease; (D) perform such maintenance or make such repairs in or to the Building or the Premises as Landlord is required to perform or make pursuant to the terms hereof; and (E) make such improvements to any portion of the Building other than the Premises as Landlord desires to make, and for such purposes enter upon the Premises, provided that same do not violate any provision of this Lease. All such work shall be done by Landlord as expeditiously as reasonably possible and so as to cause as little interference to Tenant as is reasonably practicable. Tenant waives any claim for special or consequential damages of whatever kind for any injury to, or unreasonable inconvenience or unreasonable interference with, Tenant's business, occupancy or quiet enjoyment of the Premises. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant's vaults, safes and similar areas designated from time to time by Tenant in writing to Landlord), and Landlord shall have the right to use reasonable means to open such doors to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any such means shall not under any circumstances be deemed or construed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from any part of the Premises. Such entry by Landlord shall not act as a termination of Tenant's obligations under this Lease.

**ARTICLE 18**  
**Subordination and Attornment**

**A. Subordination.** Tenant agrees that this Lease and the rights of Tenant hereunder are and shall be subject and subordinate to: (i) all existing or future mortgages, deeds of trust, ground leases or master leases encumbering all or any part of the Property; (ii) all past and future advances made thereunder; and (iii) all renewals, modifications, replacements and extensions of any such mortgages, deeds of trust, ground leases or master leases ("**Superior Mortgage**" or "**Superior Lease**"), with each mortgagee or lessor thereunder being referred to as a "**Superior Mortgagee**" or "**Superior Lessor**", as the case may be). Any Superior Mortgagee and any Superior Lessor shall have the right to elect, by written notice given to Tenant, to have this Lease made superior in whole or in part to its own Superior Mortgage or Superior Lease. If more than one Superior Mortgagee or Superior Lessor sends conflicting notices, those of the more senior Superior Mortgagee or Superior Lessor will control. Tenant has on the date hereof executed and delivered to Landlord a subordination, non-disturbance and attornment agreement ("**SNDA**") in the form required by Landlord's existing Superior Mortgagee and Landlord shall cause such SNDA to be executed and delivered back to Tenant by such Superior Mortgagee promptly after the date hereof. With respect to any Superior Mortgage or Superior Lease entered into after the date hereof, Landlord shall, as a condition to Tenant's subordination to any such Superior Mortgage or Superior Lease, obtain a subordination, non-disturbance and attornment agreement from the applicable Superior Mortgagee or Superior Lessor on such party's standard form.

**B. Attornment.** If the interest of Landlord under this Lease shall be transferred to any Superior Mortgagee under a Superior Mortgage or Superior Lessor under a Superior Lease, or other purchaser or person taking title to the Property by reason of the foreclosure of any Superior Mortgage or deed in lieu of foreclosure or termination of any Superior Lease (any such person

being sometimes referred to as “**Successor Landlord**”), Tenant shall be bound to such Successor Landlord under all of the terms, covenants and conditions of this Lease for the balance of the Term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in this Lease, with the same force and effect as if the Successor Landlord were the landlord under this Lease. If requested to do so, Tenant shall enter into a new Lease for the balance of the Term upon the same terms and conditions of this Lease. Tenant shall attorn to and recognize as Tenant’s landlord under this Lease such Successor Landlord, said attornment to be effective and self-operative without the execution of any further instruments upon the Successor Landlord’s succeeding to the interest of Landlord under this Lease and assuming the obligations of Landlord hereunder.

## **ARTICLE 19**

### **Estoppel Certificate**

Tenant agrees that, from time to time within ten (10) business days’ upon written request by Landlord, Tenant shall execute and deliver to Landlord a written certificate certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in possession of the Premises, if that is the case; (iv) that Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in detail; (v) that Tenant has no off-sets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any off-sets or defenses, a full and complete explanation thereof); and (vi) such additional matters as may be requested by Landlord, it being agreed that such certificate may be relied upon by any prospective purchaser, mortgagee or other person having or acquiring an interest in the Building.

## **ARTICLE 20**

### **Assignment and Subletting**

#### **A. Transfers.**

1. Except as otherwise provided in this Article, Tenant shall not have the right, without the prior written consent of Landlord, to: (a) mortgage, pledge, hypothecate, encumber, permit any lien to attach to, or otherwise transfer, directly or indirectly, this Lease or any interest hereunder, by operation of law or otherwise; (b) assign this Lease or sublet the Premises or any part thereof; or (c) otherwise permit the use of the Premises by any persons other than Tenant (each of the foregoing is herein sometimes referred to as a “**Transfer**” and any person to whom any Transfer is made or sought to be made is herein sometimes referred to as a “**Transferee**”).

2. If Tenant desires to consummate any Transfer (other than a Permitted Transfer) with respect to which Landlord’s consent is required pursuant to the terms hereof, Tenant shall notify Landlord in writing of the material terms and conditions of such Transfer (each a “**Transfer Request**”) including, without limitation: (a) the proposed effective date of such Transfer (which shall not be less than fifteen (15) business days after the date of the Transfer Request); (b) in the case of a sublease, the portion of the Premises proposed to be Transferred (the “**Subject Space**”); (c) the proposed rent or other consideration therefor; and (d) the name and address of the proposed Transferee. The Transfer Request shall be accompanied by a copy of the proposed document or documents effecting the proposed Transfer and, in the case of an assignment, the most recent financial statements of the proposed Transferee. Such financial statements shall be certified by an officer, partner, owner or independent auditor of the proposed Transferee, to the extent certified statements are available to Tenant. Tenant shall also submit to Landlord such other information regarding the proposed Transfer and the proposed Transferee as Landlord may reasonably request. Any Transfer made in violation of this Article shall, at Landlord’s option, be deemed null, void and of no effect, and/or shall constitute a Default (as hereinafter defined).

## B. Approval.

1. Subject to Landlord's right to recapture under Section 20(E), if applicable, Landlord shall not unreasonably withhold or condition or delay its consent to any proposed Transfer. Within ten (10) business days after delivery of any Transfer Request, Landlord shall: (a) grant consent to the proposed Transfer; or (b) notify Tenant that Landlord withholds its consent to the proposed Transfer, which notice shall specify Landlord's reasons for withholding such consent.

2. Tenant agrees that Landlord shall be acting reasonably in withholding its consent, when such consent is required hereunder, if any one or more of the following applies: (a) the Transferee is of a character or reputation or engaged in a business which will damage the reputation of the Building or is inconsistent with the type of tenants found in Comparable Buildings; (b) the Transferee intends to use the Premises or any portion thereof for purposes which are not permitted under this Lease; (c) the Transferee is a governmental or quasi-governmental agency or instrumentality; (d) there exists an Event of Default at the time Tenant requests consent to the proposed Transfer; or (e) the Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested.

3. Tenant agrees to pay to Landlord, within thirty (30) days after demand therefor, the actual, reasonable, out-of-pocket legal, architectural and engineering costs incurred by Landlord in connection with any Transfer (other than a Permitted Transfer) requested by Tenant, not to exceed \$1,500 per request, whether or not Landlord consents thereto.

**C. Transfer Premium.** If Landlord consents to any Transfer (other than a Permitted Transfer), Tenant, contemporaneously with Tenant's delivery of a fully executed duplicate original of the document or documents effecting such Transfer, shall deliver to Landlord a certification (the "**Transfer Premium Certificate**") of the amount of any consideration to be received by Tenant that is attributable to such Transfer. Except in the case of a Permitted Transfer, Tenant shall pay to Landlord fifty percent (50%) of any Net Transfer Premium (as hereinafter defined) within thirty (30) days after same is received and collected by Tenant from time to time. As used herein, "**Net Transfer Premium**" shall mean, with respect to any Transfer, the amount of any consideration received from any Transferee in consideration for such Transfer less: (i) in the case of a subletting, all Rent payable under this Lease in respect of the Subject Space during the term of such sublease; and (ii) Transfer Costs (as hereinafter defined). As used herein, "**Transfer Costs**" with respect to any Transfer shall mean: (a) any allowances or other economic concessions (including free rent periods); (b) costs of alterations made to the Premises (including without limitation costs of dividing the Premises and creating common corridors); (c) brokerage commissions; (d) advertising and marketing costs; and (e) reasonable legal, architectural, and engineering costs paid or incurred by Tenant (whether incurred directly by Tenant or reimbursed by Tenant to Landlord or other parties). If part of the consideration for such Transfer shall be payable other than in cash, Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord and to Tenant.

**D. Subordination of Subleases.** Any sublease hereunder shall be subject and subordinate to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (i) treat such sublease as having been canceled effective as of the date this Lease shall terminate and if such subtenant shall fail to vacate the Subject Space on or before such date, to repossess the Subject Space by any lawful means; or

(ii) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. If there exists an Event of Default, Landlord is hereby irrevocably authorized, as Tenant's agent, to deliver a notice to any Transferee (with a copy to Tenant), directing such Transferee to make all payments under or in connection with the Transfer directly to Landlord (which payment or payments Landlord shall apply first to any Rent then due and payable to Landlord, then to any arrears under this Lease, and any excess in such payment over Tenant's then current obligations or arrears shall be promptly delivered to Tenant) until such time as such Transferee receives notice from either Landlord or Tenant that such Event of Default has been cured (and Landlord and Tenant each agree that a copy of such notice shall be simultaneously delivered to the other party).

**E. Landlord's Recapture Right.** Except with respect to Permitted Transfers, in the event Tenant at any time desires to assign this Lease or to sublet any portion of the Premises and if such sublease would cause more than fifty percent (50%) of the Premises to be subject to subleases for all or substantially all of the remainder of the Term, Landlord shall have the right, to be exercised by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice requesting Landlord's exercise or waiver of such right, to recapture the space then proposed to be assigned or sublet as described in Tenant's notice and such recapture notice shall, if given, cancel and terminate this Lease with respect to the space therein described as of the effective date of such assignment or sublease as stated in Tenant's notice, provided that Tenant may rescind its request within five (5) business days of receipt of Landlord's notice in which event Landlord's option to recapture the space shall not be operative. Tenant's notice may be given prior to Tenant locating an assignee or subtenant. If Landlord fails to so notify Tenant with such 30-day period, Landlord shall be deemed to have elected not to exercise such recapture right and Tenant may, after obtaining Landlord's approval thereof to the extent required in Section 20(B), enter into an assignment or sublease as specified in Tenant's notice not later than nine (9) months after the giving of Tenant's notice or, if Tenant fails to do so, such recapture right shall be reinstated. If Tenant's notice shall cover all of the Premises, and Landlord shall have exercised its foregoing recapture right, the Term of this Lease shall expire and end on the date stated in Tenant's notice as fully and completely as if the date had been herein definitely fixed for the expiration of the Term. If, however, this Lease shall be cancelled with respect to less than the entire Premises, Base Rent and Tenant's Pro Rata Share shall be adjusted to reflect only those portions of the Premises retained by Tenant as described in this Lease, and this Lease as so amended shall continue thereafter in full force and effect.

**F. Non-Waiver.** The consent by Landlord to any Transfer shall not relieve Tenant, or any person claiming through or by Tenant, of the obligation to obtain the consent of Landlord, pursuant to this Article, to any further Transfer (other than a Permitted Transfer). Landlord's collection of Rent from any Transferee during the continuance of an Event of Default in accordance with the provisions of Section 20(D) hereof shall not be deemed a waiver of any of Landlord's rights under this Article, an acceptance of such Transferee as Tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease. No Transfer (including without limitation any Permitted Transfer) shall release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall continue to be fully liable hereunder (but Tenant shall not be liable for any additional obligations under any amendment to or modifications of this Lease by any Transferee unless consented to in writing by Tenant).

**G. Permitted Transfers.**

1. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the right, without Landlord's prior consent, to assign this Lease or any interest herein to, sublease all or any portion of the Premises to or permit the use of all or any portion of the Premises by: (i) any successor to Tenant or any Permitted Transferee resulting from a merger,

reorganization, consolidation, sale of assets or other transaction with Tenant; or (ii) any Affiliate of Tenant or any Permitted Transferee (each of the foregoing is herein sometimes referred to as a “**Permitted Transfer**” and any person or entity to whom any Permitted Transfer is made is herein sometimes referred to as a “**Permitted Transferee**”). As used herein, an “**Affiliate**” shall mean a person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Tenant (“**control**” being interpreted as the ownership of more than ten percent (10%) of the interests in such entity or the possession of the power to direct the management and policies of such entity or the distribution of its profits).

2. Tenant shall notify Landlord of a Permitted Transfer as soon as reasonably possible (and in no event later than the effective date thereof), and such notice shall include information establishing the relationship between Tenant and the Permitted Transferee. Notwithstanding anything contained in this Section to the contrary: (a) no Permitted Transfer shall violate any of the conditions set forth in Sections 20(B)(2)(b) and (c) hereof; (b) any assignee of this Lease shall expressly assume all of Tenant’s obligations and liabilities hereunder to thereafter be performed without releasing Tenant; (c) any sublease shall by its terms be expressly subordinate to all of the terms, covenants and conditions of this Lease; and (d) Tenant shall deliver to Landlord on or prior to the effective date an original executed copy of all documentation effecting such Transfer.

## **ARTICLE 21**

### **Certain Rights Reserved By Landlord**

Landlord shall have the following rights, exercisable without notice (except as herein expressly provided) and without effecting an eviction, constructive or actual, of Tenant’s possession of the Premises, giving rise to any claim for set-off or abatement of Rent and without being liable to Tenant (except insofar as same constitutes a breach of an express provision of this Lease or, subject to Section 10(C) hereof, involves the negligence or willful misconduct of Landlord):

**A.** To change the name of the Building or the Building’s street address.

**B.** To install, affix and maintain any and all signs on the exterior and interior of the Building.

**C.** To reasonably approve, prior to installation, all types of window shades, blinds, drapes and similar window coverings, which approval shall not be unreasonably withheld, conditioned or delayed.

**D.** To reasonably approve, prior to installation, all internal lighting that may be visible from the exterior of the Building, which approval shall not be unreasonably withheld, conditioned or delayed.

**E.** To decorate or to make alterations, additions or improvements, structural or otherwise, in or to the Property or any part thereof, provided that access to the Premises or the Building is not materially and permanently adversely affected thereby. In connection with such matters, Landlord may, subject to the provisions of Article 17 hereof, enter upon the Premises and take into and upon or through the Premises all materials required to make such repairs, maintenance, alterations or improvements (provided that there shall be no staging of materials in or from the Premises), and may close public entry ways, other public areas, restrooms, stairways or corridors. Landlord shall take all reasonable steps to minimize any interference with Tenant’s operations resulting from any actions taken by Landlord under this Section. Landlord agrees to promptly repair any damage and restore the Premises to their condition prior to the actions taken pursuant to this Section.

**F.** To have and retain paramount title to the Premises and the Property free and clear of any act of Tenant purporting to burden or encumber it.

**G.** Subject to Tenant's Right of First Refusal set forth in this Lease, to lease space in the Property to any person or entity.

**H.** To grant to anyone the exclusive right to use any portion of the Property for any specified purpose, provided that any such exclusive right shall not operate to exclude Tenant from the office uses and related uses expressly permitted in Article 5 hereof and to reserve to Landlord the exclusive right to reasonably control and reasonably regulate any business and any service being rendered within the Building to its tenants.

**I.** To approve (which approval shall not be unreasonably withheld) the weight, size and location of safes and other heavy equipment and bulky articles in and about the Premises and the Building (so as not to overload the floors of the Premises), and to require all such items to be moved into and out of the Building and Premises only at such times and in such manner as Landlord shall reasonably direct in writing. Subject to the waiver of subrogation set forth in Section 10(C) hereof, any damages done to the Building, the Premises or to other tenants in the Building by Tenant in the course of moving safes, furniture and other items, or from overloading floors in any way, shall be paid by Tenant. Furniture, boxes, merchandise or other bulky articles shall be transported within the Building only upon or by vehicles equipped with rubber tires and shall be carried only in the freight elevators and in the case of bulk deliveries at such times as the management of the Building shall require pursuant to reasonable rules promulgated and consistently applied to all tenants of the Building. Movements of Tenant's property into or out of the Building and within the Property are entirely at the risk and responsibility of Tenant, and Landlord reserves the right to require a permit before allowing any such property to be moved out of the Building, which permit shall be in a form prepared by Landlord and reasonably acceptable to Tenant, executed by Tenant's representative, and used for the sole purpose of preventing the unauthorized removal from the Building of Landlord's property or the property of any tenant of the Building.

**J.** To close the Building after normal working hours and on Saturdays, Sundays and holidays subject, however, to Tenant's right to admittance as set forth herein under such reasonable regulations as Landlord may prescribe from time to time, which may include by way of example but not of limitation, that persons entering or leaving the Building identify themselves to Building personnel by registration or otherwise and that said persons establish their right to enter or leave the Building. Notwithstanding the foregoing, Tenant, subject to the other terms and conditions hereof (and subject to any emergency, fire or other occurrence, or other situation beyond the reasonable control of Landlord), shall have access to the Building and the Premises twenty-four (24) hours per day, seven days per week, fifty-two weeks per year, and services shall be delivered to the Premises at all times and to the extent described in Article 6 hereof.

**K.** To limit or prevent access to the Property, shut down elevator service, activate elevator emergency controls, or otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants or other occupants of the Property or the protection of the Property and other property located thereon or therein, in case of fire, invasion, insurrection, riot, war or other condition that poses a material threat to the health or safety of the tenants or the other occupants of the Property, or the material threat thereof.



L. To install and maintain pipes, ducts, conduits, wires and structural elements in the Premises which serve other parts of the Building provided that: (i) such installations and maintenance shall not unreasonably interfere with the ability of Tenant to conduct its business during normal working hours; (ii) any damage caused thereby to the Premises or Tenant's property is promptly repaired and the Premises restored to the condition existing prior to such installation or maintenance, all at Landlord's expense; and (iii) all installations shall be made behind walls or above hung ceilings.

Landlord may exercise any or all of the foregoing rights hereby reserved, subject at all times to the provisions of Article 6 hereof (to the extent applicable).

## **ARTICLE 22**

### **Landlord's Remedies**

**A. Default.** The occurrence of any one or more of the following events shall constitute a "**Default**" by Tenant, which if not cured within any applicable time permitted for cure herein, shall constitute an "**Event of Default**" by Tenant which shall give rise to Landlord's remedies set forth in Section 22(B) hereof: (i) failure by Tenant to make when due any payment of Rent, unless such failure is cured within ten (10) days after Landlord shall have delivered to Tenant a notice specifying such default; (ii) failure by Tenant to observe or perform any of the terms or conditions of this Lease or the Rules to be observed or performed by tenant other than as specified in clauses (i) or (viii) of this paragraph, unless such failure is cured within thirty (30) days after Landlord shall have delivered to Tenant a notice specifying such failure (provided that, if the nature of Tenant's failure is such that more time is reasonably required to cure same or Tenant is delayed in or prevented from effecting such cure due to Unavoidable Delay, an Event of Default shall not exist if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion and in fact effects said cure within an additional period of ninety (90) days); (iii) the making by Tenant of any general assignment for the benefit of creditors; (iv) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt under any bankruptcy or insolvency law, or the filing by or against Tenant under the arrangement or insolvency provisions of the United States Bankruptcy Code or under the provisions of any Law of like import (unless, in the case of an involuntary petition filed against Tenant, the same is dismissed within ninety (90) days); (v) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within ninety (90) days; (vi) attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease; (vii) Tenant's insolvency or admission of an inability to pay its debts as they mature; or (viii) there occurs a Transfer of this Lease, or the Premises or any part thereof, in violation of Article 20 hereof.

The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law. To the extent that any of the foregoing notice periods provided for in this Article are greater than the notice periods required under any Law, such greater notice periods provided for herein shall substitute for such shorter notice periods required under such Law, and, to the extent not prohibited by such Law, any notices given pursuant to the terms hereof shall be deemed the notice required by any such Law.

### **B. Remedies.**

1. If an Event of Default occurs, Landlord shall have, in addition to those rights and remedies described in Section 22(C) hereof, the rights and remedies hereinafter set forth, any and all of which may be, except as otherwise expressly provided herein, exercised with or without further notice and with or without demand whatsoever, concurrently or successively, and at such time or times and in such order as Landlord may from time to time determine:

a) Landlord may terminate this Lease and Tenant's right to possession of the Premises and repossess the Premises by detainer suit, summary proceedings or other lawful means, and recover from Tenant as damages an amount of money equal to the sum of:

(i) any accrued and unpaid Rent as of the date this Lease is terminated including interest at the Default Rate (as hereinafter defined) on any accrued and unpaid amount from the time due until the time paid, and

(ii) as liquidated damages for Tenant's obligations under the Lease for unpaid Rent which would have accrued after the date this Lease is terminated, the net present value of any unpaid Rent which would have accrued after the date this Lease terminated during the balance of this Term, less the net present value of the current market rate for the Premises for such period, after deducting from the current market rate for the Premises the Costs of Re-letting (as hereinafter defined) for such balance of the Term (such net amount not to be less than zero in any event, it being the intention of the parties that Landlord shall have no obligation to pay to Tenant or to offset against other sums Tenant owes to Landlord the excess, if any, of the net present value of current market rate over the net present value of said unpaid Rent).

For purposes of computing the amount of Rent herein that would have accrued after the date this Lease is terminated, Tenant's Tax Payments and Tenant's Operating Expense Payments, shall be projected, based upon the average rate of increase, if any, in such items from the Commencement Date through the date this Lease is terminated. Net present value shall be computed on the basis of a discount rate equal to the then-current yield on United States Treasury obligations having a maturity approximately equal to the residue of the Term as reasonably determined by Landlord.

b) Landlord may terminate Tenant's right of possession and repossess the Premises by detainer suit, summary proceedings or other lawful means, without terminating this Lease (and if applicable Law permits, and Landlord shall not have expressly terminated this Lease in writing, any termination shall be deemed a termination of Tenant's right of possession only), and recover from Tenant as damages an amount of money equal to the sum of:

(i) any accrued and unpaid Rent as of the date possession is terminated, including interest at the Default Rate on any accrued and unpaid amount from the time due until the time paid, and

(ii) sums equal to unpaid Rent reserved hereunder, payable on the due dates specified herein commencing on the date possession is terminated and ending on the then current Expiration Date, less any Base Re-Letting Proceeds (as hereinafter defined) received by Landlord during such period.

2. Landlord may bring suit or suits for the recovery of Landlord's damages, or any installments thereof, from time to time as the same accrue or after the same have accrued, and no suit or recovery of any portion due hereunder shall be deemed a waiver of Landlord's right to collect all amounts to which Landlord is entitled hereunder, nor shall the same serve as any defense to any subsequent suit brought for any amount not theretofore reduced to judgment.

3. Without limiting the generality of Section 22(B)(1) hereof, an election by Landlord to terminate Tenant's right to possession with respect to the Premises or exercise any one or more of its other rights and remedies, without terminating this Lease, shall not preclude a subsequent election by Landlord to terminate this Lease.

**C. Cumulative Remedies.** Except as otherwise expressly specified herein, Landlord shall have all of the rights and remedies available at law and in equity in addition to those rights and remedies specified herein, including without limitation the right to seek any declaratory, injunctive or other equitable relief.

**D. Interest.** Any damages payable pursuant to this Article that are not paid when due shall accrue interest from the due date at the Default Rate, until payment is received by Landlord. Such interest payments shall not be deemed consent by Landlord to late payments, nor a waiver of Landlord's right to insist upon timely payments at any time, nor a waiver of any remedies to which Landlord is entitled as a result of the late payment of such damages.

**E. Certain Definitions.** For purposes hereof:

1. The term "**Base Re-Letting Proceeds**" shall mean the total amount of rent and other consideration paid by any Replacement Tenants, less all Costs of Re-Letting. If the Premises shall be re-let in combination with other space, then Base Re-Letting Proceeds shall be apportioned on a square foot of Rentable Area basis.

2. The term "**Costs of Re-Letting**" shall include without limitation, all reasonable costs and expenses incurred by Landlord for any repairs, maintenance, changes, alterations and improvements to the Premises, brokerage commissions and reasonable attorneys' fees required to enter into leases with Replacement Tenants, amortized over the terms of such leases to such Replacement Tenants with interest at the Default Rate (as defined below). Such Costs of Re-Letting shall be apportioned between costs and expenses allocable to the remaining balance of the Term (or, in the event of a subsequent termination of this Lease, what would have been the balance of the Term but for such termination) and the costs and expenses allocable to such portion of the term of the Replacement Tenant's lease that extends beyond the remaining balance of the Term (or what would have been the remaining balance of the Term).

3. The term "**Replacement Tenants**" shall mean any person or entity to whom Landlord re-lets the Premises or any portion thereof pursuant to this Article provided that if such person is an affiliate of Landlord or such re-letting is not an arm's-length transaction, rent with respect to such lease shall be deemed the greater of: (a) the rent actually paid by such person; or (b) the current market rate for the applicable space.

4. The term "**Default Rate**" shall mean the lower of: (a) the sum of: (i) the rate per annum equal to the prime rate of interest announced from time to time by JPMorgan Chase Bank, N.A. in Chicago, Illinois, or any successor as its corporate prime or base rate of interest (such rate to change from time to time as and when such corporate prime or base rate changes); plus (ii) two percent (2%); or (b) the highest rate permitted by applicable Law.

**F. Landlord Action.** If Tenant at any time fails to make any payment or perform any other act on its part to be paid or performed under this Lease following notice and the expiration of any applicable grace or cure period (or in the case of an emergency immediately), Landlord may, but shall not be obligated to, make such payment or perform such other act to the extent Landlord may deem desirable after delivering to Tenant an additional notice (except in the event of an emergency, in which case no additional notice shall be required) stating in **BOLD PRINT** that if Tenant shall fail to make such payment or perform such act within seven (7) days after Landlord delivers such notice, Landlord shall make such payment or perform such act, which notice shall identify with reasonable specificity the nature of the payments or acts to be made or performed by

Landlord, if applicable, any contractors to be engaged by Landlord (including a copy of the cost or bid proposal submitted to Landlord by such contractor (which proposal shall be the lowest of at least two bids obtained by Landlord from reputable union contractors capable of performing first-class work)). Tenant shall promptly reimburse Landlord within twenty (20) business days after demand for all reasonable actual, out-of-pocket expenses (including, without limitation, reasonable counsel's fees and expenses) incurred in connection with Landlord's payment or performance of Tenant's obligations, and all such sums shall be deemed Additional Rent hereunder.

**G. Other Matters.** No re-entry or repossession, repairs, changes, alterations and additions, re-letting, acceptance of keys from Tenant, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or accept a surrender of the Premises, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express notice of such intention is sent by Landlord or its agent to Tenant. To the fullest extent permitted by Law, all rent and other consideration paid by any Replacement Tenant shall be applied: first, to the Costs of Re-Letting apportionable to the Premises and allocable to the remaining balance of the Term (or what would have been the balance of the Term but for termination of this Lease pursuant to this Article), second, to the payment of any Rent payable prior to the date Landlord recovers possession of the Premises from Tenant; third, to the damages payable by Tenant to Landlord pursuant to this Article, as the same become due, and any remaining sums shall be retained by Landlord. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant. The times set forth herein for the curing of Events of Default by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Law to redeem or reinstate this Lease.

**H. Duty to Mitigate.** Landlord shall use commercially reasonable efforts to mitigate its damages by attempting to re-let all or any part of the Premises to a Replacement Tenant, for such rent and upon such terms as shall be satisfactory to Landlord (including the right to re-let the Premises or a portion thereof for a term greater or lesser than that remaining under the Term of this Lease, the right to re-let the Premises as a part of a larger area and the right to change the character or use made of the Premises). For the purpose of such re-letting, Landlord shall have the right to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary in connection with any re-letting or proposed re-letting to any Replacement Tenant.

## **ARTICLE 23**

### **Landlord Default**

#### **A. Landlord Default.**

1. The occurrence of any one or more of the following events shall constitute a default by Landlord (a "**Landlord Default**"), which if not cured within any applicable time permitted for cure below, shall constitute a "**Landlord Event of Default**" and shall give rise to Tenant's remedies set forth in Section 23(B) hereof: (i) failure by Landlord to make when due any payment to Tenant, unless such failure is cured within ten (10) days after Tenant shall have delivered to Landlord a notice specifying such Landlord Default; or (ii) failure by Landlord to observe or perform any of the terms or conditions of this Lease to be observed or performed by Landlord other than the payment of money, unless such failure is cured within thirty (30) days after Tenant shall have delivered to Landlord a notice specifying such failure (provided that, if the nature of Landlord's failure is such that more time is reasonably required to cure same or Landlord is delayed in or prevented from effecting such cure due to Unavoidable Delay, a Landlord Event of Default shall not be deemed to have occurred if Landlord commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion and in fact effects said cure within such time as shall reasonably be necessary).

2. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law. To the extent that any of the foregoing notice periods provided for in this Article are greater than the notice periods required under any Law, such greater notice periods provided for herein shall substitute for such shorter notice periods required under such Law, and, to the extent not prohibited by such Law, any notices given pursuant to the terms hereof shall be deemed the notice required by any such Law.

**B. Remedies.** If a Landlord Event of Default occurs, except as otherwise expressly specified herein, Tenant shall have all of the rights and remedies available at law and in equity including without limitation the right to seek any declaratory, injunctive or other equitable relief, any and all of which may be exercised, except as otherwise expressly provided herein, with or without further notice and with or without demand whatsoever, concurrently or successively, and at such time or times and in such order as Tenant may from time to time determine.

**C. Interest.** Any amounts payable to Tenant under this Lease that are not paid prior to the expiration of any applicable notice and grace period shall accrue interest from the due date at the Default Rate until payment is received by Tenant. Such interest payments shall not be deemed consent by Tenant to late payments, nor a waiver of Tenant's right to insist upon timely payments at any time, nor a waiver of any remedies to which Tenant is entitled as a result of the late payment of such damages.

**D. Notice to Superior Mortgagees and Superior Lessors.** Tenant agrees to deliver to any Superior Mortgagee or Superior Lessor a copy of any notice of Landlord Default concurrently with and in the same manner that such notice is delivered to Landlord, provided that prior to the time that Tenant intends to give such notice Tenant has been notified of the name and address of such Superior Mortgagee or Superior Lessor (such party with respect to which Tenant has been so notified, a "**Notified Party**"). Tenant further agrees that the Notified Party shall have until the expiration of any cure period granted to Landlord hereunder with respect to such Landlord Default to cure same plus any additional period provided for in any SNDA or other agreement between Tenant and such Notified Party. Until the time allowed, as aforesaid, for the Notified Party to cure the Landlord Default has expired without cure, Tenant shall have no right to, and shall not, exercise remedies otherwise available to it in respect thereof, provided that nothing herein shall diminish Tenant's right to any rent abatements described in this Lease, or the rights of Tenant provided in this Article.

## ARTICLE 24

### Conveyance by Landlord; Liability of Landlord and Tenant

**A.** If Landlord ("**Existing Landlord**") shall convey or otherwise transfer the Building or the Property to a bona-fide, independent third-party, person or entity ("**Landlord's Transferee**"), effective upon the date of such conveyance or transfer: (i) Landlord's Transferee shall become landlord hereunder and shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Existing Landlord which first arise after such date, except that Landlord's Transferee shall be obligated to cure any default of Existing Landlord under this Lease that is continuing after such date; (ii) Tenant shall attorn to Landlord's Transferee; and (iii) Existing Landlord shall, thereafter, be free of all liabilities and obligations hereunder which first arise after such date. Nothing herein shall be construed to restrict or prevent any conveyance or transfer by Existing Landlord.

**B.** It is expressly understood and agreed by Tenant that any liability of Landlord for damages for breach or nonperformance by Landlord of Landlord's covenants, undertakings or agreements or otherwise arising under this Lease or in connection with the relationship of Landlord and Tenant hereunder, shall be collectible only out of Landlord's interest in the Property, proceeds from the conveyance or other transfer of the Land and/or the Building or proceeds of insurance or a condemnation (or if Landlord is the beneficiary of a land trust, Landlord's right, title and interest in such land trust), in each case as the same may then be encumbered (as long as any loan is from a lender that is not an affiliate of Landlord), and no personal liability is assumed by, nor at any time may be asserted against, Landlord's members or its other owners, direct or remote, all such liability, if any, being expressly waived and released by Tenant. Similarly, none of the members or other owners of the Landlord Protected Parties shall have any personal liability herein. Tenant further expressly understands and agrees that if any instrument involving the Building is executed by an agent, member or representative of Landlord or its agent ("**Landlord's Agent**") on behalf of Landlord, Landlord's Agent will be executing such instrument, not in its own right but solely as Landlord's agent and that nothing in this Lease shall be construed as creating any liability whatsoever against such Landlord's Agent, its owners, direct and remote, and their respective directors, officers or employees and in particular, without limiting the generality of the foregoing, there shall be no liability of Landlord's Agent to pay any indebtedness or sum accruing thereunder, or to perform any covenant or agreement whether express or implied therein contained, it being agreed that Landlord shall have sole responsibility therefor. Nothing contained herein shall constitute a waiver or release of any of Landlord's obligations under this Lease or limit the right of Tenant to name any current, former, or future partner, principal, officer, director, member or employee of Landlord as a party in any action or suit by Tenant against Landlord to the extent that applicable state Law or court rules or procedures require Tenant to name such partner, principal, officer, director, member or employee (rather than the Landlord entity) as parties to obtain a judgment against, or proceed against, Landlord or Landlord's assets; provided, however, that no judgment resulting from any such suit or action shall be enforced against Landlord or any such partner, principal, officer, director, member or employee personally or against any of its assets (other than Landlord's interest in the Property, proceeds from the conveyance or other transfer of the Land and/or the Building or proceeds of insurance or a condemnation (or if Landlord is the beneficiary of a land trust, Landlord's right, title and interest in such land trust), in each case as the same may then be encumbered, as long as any loan is from a lender that is not an affiliate of Landlord).

## **ARTICLE 25**

### **Waiver; Indemnification**

#### **A. Mutual Waivers.**

1. To the extent permitted by Law, Tenant waives and releases the Landlord Protected Parties, Landlord's Agent, and Landlord's contractors, subcontractors and servants from all claims for damage to property and injuries to persons sustained by Tenant or any occupant of the Building or Premises relating to: (a) the Building or Premises or any part of either or any equipment or appurtenance becoming out of repair; (b) any accident in or about the Building; or (c) directly or indirectly, any act or neglect of any tenant or occupant of the Building or of any other person but the foregoing shall not be deemed to release any Landlord Protected Parties, Landlord's Agent or Landlord's contractors, subcontractors or servants from their own negligence or willful misconduct (except as waived under Section 10(C) hereof) or from any breach of the provisions of this Lease.

2. To the extent permitted by Law, Landlord waives and releases Tenant and Tenant's agents, contractors, subcontractors, servants, subtenants and assignees from all claims for damage to property and injuries to persons sustained by Landlord or any occupant of the

Building or Premises relating to: (a) the Premises or any equipment therein or appurtenance thereto becoming out of repair; (b) any accident in or about the Building; or (c) directly or indirectly, any act or neglect of any tenant or occupant of the Building or of any other person but the foregoing shall not be deemed to release any of Tenant and Tenant's agents, contractors, subcontractors, servants, subtenants or assignees from their own negligence or willful misconduct (except as waived under Section 10(C) hereof) or from any breach of the provisions of this Lease.

3. This Section shall apply especially, but not exclusively, to damage caused by the flooding of basements or other subsurface areas, refrigerators, sprinkling devices, air-conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, and shall apply equally whether the damage results from the act or neglect of other tenants of the Building or of any other person and whether that damage caused or resulted from any thing or circumstance above mentioned or referred to, or any other thing or circumstance, whether of a like or of a wholly different nature.

**B. Tenant's Property.** All property situated in the Building or the Premises and belonging to Tenant, its agents, contractors, subcontractors, employees or invitees or any occupant of the Premises shall be situated there at the risk of Tenant or such other person only, and Landlord shall not be liable for damage, theft, misappropriation or loss of that property, unless such damage, theft, misappropriation or loss is due to any negligent act or omission, willful misconduct or breach of Landlord's obligations under this Lease subject to the provisions of Section 10(C) hereof.

**C. Tenant Indemnity.** Subject to the provisions of Section 10(C) hereof, Tenant shall protect, defend, indemnify and hold harmless the Landlord Protected Parties from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, losses, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) (collectively, "**Damages**") suffered by a Landlord Protected Party directly or by reason of any claim, suit or judgment brought against such Landlord Protected Party to the extent arising out of or attributable to any negligent act or omission or willful misconduct of Tenant, its agents, employees, contractors or subcontractors or any breach of Tenant's obligations under this Lease with respect to Tenant's leasing of or operations in the Premises, including, but not limited to, bodily injury (including death) or property damage. If any claim for Damages is asserted or any such action is brought, Landlord shall give Tenant prompt notice thereof and Tenant shall resist and defend such claim, action or proceeding by counsel approved by Landlord or the applicable Landlord Protected Party (such approval not to be unreasonably withheld, conditioned or delayed); however, Tenant shall not be liable for the costs of any separate counsel employed by any Landlord Protected Party. Landlord hereby approves any counsel designated by Tenant's insurance carrier. If it shall be finally determined by a court of competent jurisdiction that, pursuant to the foregoing provisions of this Section, Tenant is or was not required to indemnify or hold harmless any Landlord Protected Party from any such claim, action or judgment for Damages, Landlord shall (or shall cause the applicable Landlord Protected Party to) reimburse Tenant for all or such portion of the costs and expenses incurred by Tenant (or its insurance carrier) under this Section on account thereof plus interest at the Default Rate on such costs and expenses. Without limiting the generality of the foregoing, Tenant specifically acknowledges that the indemnity herein shall apply to claims in connection with or arising out of any Alteration Work and the installation, maintenance, use or removal of any cabling. Notwithstanding the foregoing, Tenant shall not be obligated to indemnify a Landlord Protected Party against such party's own negligence or willful misconduct or breach of such party's obligations under this Lease. Tenant's obligations and liabilities pursuant to this Section shall survive the expiration or earlier termination of this Lease.

**D. Landlord Indemnity.** Subject to Section 10(C) hereof, Landlord shall protect, defend, indemnify and hold harmless Tenant, its partners, Affiliates and subsidiaries and their respective principals, officers, directors, members, employees, agents, contractors, subcontractors, and invitees (each, an “**Indemnified Tenant Party**”) from and against any and all Damages suffered by the Indemnified Tenant Party directly or by reason of any Landlord Default claim, suit, or judgment brought against such Indemnified Tenant Party and arising out of or attributable to any negligent act or omission or willful misconduct of Landlord, its agents, employees, contractors or subcontractors or any breach of Landlord’s obligations under this Lease with respect to the ownership, construction, equipping, installation or management of the Building, the Land and any common areas or parking facilities located thereon, including, but not limited to, bodily injury (including death) or property damage. If any claim for Damages is asserted or any such action is brought, Tenant shall give Landlord prompt notice thereof and Landlord shall resist and defend such claim, action or proceeding by counsel approved by Tenant or the applicable Indemnified Tenant Party (such approval not to be unreasonably withheld, conditioned or delayed); however, Landlord shall not be liable for the costs of any separate counsel employed by any Indemnified Tenant Party. Tenant hereby approves any counsel designated by Landlord’s insurance carrier. If it shall be finally determined by a court of competent jurisdiction that pursuant to the foregoing provisions of this Section, Landlord is or was not required to indemnify or hold harmless any Indemnified Tenant Party from any such claim, action or judgment for Damages, Tenant shall (or shall cause the applicable Indemnified Tenant Party) to reimburse Landlord for all or such portion of the costs and expenses incurred by Landlord (or its insurance carrier) under this Section on account thereof plus interest at the Default Rate on such costs and expenses. Notwithstanding the foregoing, Landlord shall not be obligated to indemnify any Indemnified Tenant Party for any Damages caused by such party’s negligence or willful misconduct or breach of such party’s obligations under this Lease. Landlord’s obligations and liabilities pursuant to this Section shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 26**

### **Security Deposit**

Tenant shall deposit a security deposit (the “**Security Deposit**”) with Landlord as security for the prompt, full and faithful performance by Tenant of each and every provision of the Lease and of all obligations of Tenant hereunder in the Security Deposit Amount (as defined below). The Security Deposit shall be delivered not later than the date of execution of this Lease in the initial Security Deposit Amount. Unless an Event of Default has occurred and is then continuing, the Security Deposit shall be decreased to the lower Security Deposit Amounts on the dates described below.

1. The term “**Security Deposit Amount**” as used herein shall mean Four Hundred Eighty-Seven Thousand Five Hundred Dollars (\$487,500) on the date of this Lease, with such Security Deposit Amounts being reduced to the following amounts on the following dates so long as no Event of Default exists on the date of any such scheduled reduction: (i) Three Hundred Ninety Thousand Dollars (\$390,000) on the first anniversary of the Commencement Date, (ii) Two Hundred Ninety-Two Thousand Five Hundred Dollars (\$292,500) on the second anniversary of the Commencement Date, (iii) One Hundred Ninety-Five Thousand Dollars (\$195,000) on the third anniversary of the Commencement Date, and (iv) Ninety-Seven Thousand Five Hundred Dollars (\$97,500) on the fourth anniversary of the Commencement Date.

2. If an Event of Default by Tenant then exists under the Lease, Landlord may use, apply or retain the whole or any part of the Security Deposit which is necessary for the payment of: (i) any Rent or other sums of money which Tenant may not have paid when due after any applicable cure period; (ii) any sum expended by Landlord on behalf of Tenant in accordance with the provisions of the Lease; or (iii) any sum which Landlord may expend or be required to



expend by reason of any Event of Default under the Lease by Tenant, including, without limitation, any damage or deficiency in or from the reletting of the Premises as provided in Article 22 of the Lease. The use, application or retention of the Security Deposit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by the Lease or by law (it being intended that Landlord shall not first be required to proceed against the Security Deposit) and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. If any portion of the Security Deposit is used, applied or retained by Landlord for the purposes set forth above, Tenant agrees, within ten (10) days after the written demand therefor is made by Landlord, deposit cash security with Landlord in an amount sufficient to restore the then-current required Security Deposit Amount.

3. If Tenant shall fully and faithfully comply with all of the provisions of the Lease, the Security Deposit shall be promptly returned to Tenant without interest after the expiration or termination of the Term, whether pursuant to Articles 9 or 11 or otherwise, or upon any later date after which Tenant has vacated the Premises. In the absence of evidence satisfactory to Landlord of any permitted assignment of the right to receive the Security Deposit, Landlord may return the same to the original Tenant, regardless of one or more assignments of Tenant's interest in the Lease or the Security Deposit. In such event, upon the return of the Security Deposit to the original Tenant, Landlord shall be completely relieved of liability under this Article 26 or otherwise with respect to the Security Deposit.

4. Tenant acknowledges that Landlord has the right to transfer its interest in the Building and in the Lease as to the extent set forth herein and Tenant agrees that if such a transfer occurs, Landlord shall have the right to transfer or assign the Security Deposit to the transferee. Upon such transfer or assignment and delivery of the Security Deposit to the transferee and such transferee's written assumption of responsibility for the return of the Security Deposit to Tenant, Landlord shall thereby be released by Tenant from all liability or obligation for the return of such Security Deposit and Tenant shall look solely to such transferee for the return of the Security Deposit.

5. The Security Deposit may be in the form of a Letter of Credit (as defined below). If Tenant initially deposits a cash security deposit, Tenant may later replace such cash security deposit with a Letter of Credit. The term "**Letter of Credit**" as used herein shall mean an irrevocable, unconditional standby letter of credit in a form reasonably satisfactory to Landlord, with either an initial expiration date no earlier than ninety (90) days after the Expiration Date or an automatic renewal provision as described below, issued by a national banking association reasonably acceptable to Landlord having an office in Chicago (the "**Issuing Bank**"), which Letter of Credit shall be payable to Landlord upon demand made in the City of Chicago pursuant to presentation of an unconditional sight draft with a statement by Landlord that Landlord is entitled to draw thereunder pursuant to the terms of this Lease. With respect to any scheduled decreases in the Security Deposit Amount, Landlord shall accept an amendment to or replacement of the Letter of Credit reflecting such decrease within ten (10) business days after the applicable date, provided all conditions to such decrease have been satisfied. Unless the stated expiration date of the Letter of Credit is at least ninety (90) days after the Expiration Date, the Letter of Credit shall be automatically renewed unless the Issuing Bank shall deliver to Landlord a notice of non-renewal no later than thirty (30) days prior to the expiration of the Letter of Credit. In the event that the Issuing Bank has not timely renewed the Letter of Credit, Landlord shall be entitled to draw the full amount of the Letter of Credit and hold the same as a cash security deposit, subject to the same terms and conditions of this Article 26.

**ARTICLE 27**  
**Notices**

Every notice or other communication to be given by either party to the other with respect hereto or to the Premises or Property, shall be in writing (whether or not stated elsewhere in this Lease) and shall be sent by: (a) hand; (b) served personally or by reputable overnight courier service (e.g. Federal Express) or (c) certified mail, return receipt requested, postage prepaid and posted in a United States Postal Service station or letter box in the continental United States addressed as follows:

If to Landlord:	111 N. Canal, LLC c/o Sterling Bay Companies, LLC 1040 West Randolph Street Chicago, Illinois 60607 Attn: Andrew Gloor
With a copy to:	111 N. Canal, LLC c/o Sterling Bay Companies, LLC 1040 West Randolph Street Chicago, Illinois 60607 Attn: Dean Marks, Esq.
If to Tenant:	All notices:  prior to the Commencement Date to:  Vivid Seats Ltd. 344 N Ogden, Suite 400 Chicago, Illinois 60607 Attn: Tom Spathis  on or after the Commencement Date to:  Vivid Seats Ltd. 111 N. Canal, Suite 800 Chicago, Illinois 60606 Attn: Tom Spathis
With a copy to:	Hinshaw & Culbertson LLP 222 N. LaSalle Street Suite 300 Chicago, IL 60601 Attn: John A. Goldstein, Esq.

or to such other address or addresses as Tenant or Landlord may from time to time designate by notice given as above provided (including, without limitation, any Notified Party, when required pursuant to Section 23(D) hereof). Every notice or other communication hereunder shall be deemed to have been given: (i) if sent by hand, upon the date received or the date delivery is refused; (ii) if sent by overnight courier for next business day delivery, on the next business day following the date such notice was sent; and (iii) if sent by mail, upon receipt or refusal to accept receipt. Notices not sent in accordance with the foregoing shall be of no force or effect until actually received by the foregoing parties at the addresses specified in this Article.

**ARTICLE 28**  
**Real Estate Brokers**

Landlord and Tenant each represents that it has dealt only with CBRE, Inc. (“**Landlord’s Broker**”) and with Advocate Commercial Real Estate Advisors, LLC (“**Tenant’s Broker**”) as broker, agent, consultant or finder in connection with this Lease. Landlord agrees to pay to Landlord’s Broker and Tenant’s Broker all amounts owing to Landlord’s Broker and Tenant’s Broker in respect of the consummation of this Lease pursuant to separate commission agreements between Landlord and Landlord’s Broker and Tenant’s Broker. Landlord agrees to indemnify and hold Tenant harmless from all damages, judgments, liabilities and expenses (including, without limitation, reasonable attorneys’ fees) arising from any claims or demands of any broker, agent, consultant or finder with whom Landlord has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation of this Lease. Tenant agrees to indemnify and hold Landlord harmless from all damages, judgments, liabilities and expenses (including, without limitation, reasonable attorneys’ fees) arising from any claims or demands of any broker, agent, consultant or finder, other than Landlord’s Broker and Tenant’s Broker, with whom Tenant has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation of this Lease.

**ARTICLE 29**  
**Covenant of Quiet Enjoyment**

Landlord covenants and agrees that Tenant, on paying the Rent and on keeping, observing and performing all of the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof, free from hindrance by Landlord or any person claiming by, through or under Landlord.

**ARTICLE 30**  
**Miscellaneous**

**A. Binding.** Each of the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to the provisions of Articles 20 and 24 hereof.

**B. No Recording.** Landlord and Tenant agree that this Lease shall not be recorded with the Recorder of Deeds of Cook County, Illinois.

**C. Laws.** This Lease shall be construed in accordance with the Laws of the State of Illinois. Landlord and Tenant hereby submit to the jurisdiction of the courts in and for the County of Cook, State of Illinois and each agrees that any action by Tenant against Landlord or Landlord against Tenant, as the case may be, shall be instituted in the County of Cook, State of Illinois and that Landlord shall have personal jurisdiction over Tenant for any action brought by Landlord against Tenant, and Tenant shall have personal jurisdiction over Landlord for any action brought by Tenant against Landlord in the County of Cook, State of Illinois.

**D. Air.** This Lease does not grant any legal rights to “light and air” outside of the Premises nor to any particular view or cityscape visible from the Premises.

**E. Amendments.** This Lease and the Exhibits hereto shall not be amended, changed or modified in any way except in writing executed by Landlord and Tenant.

**F. Survival of Obligations.** Any obligations of Landlord and Tenant accruing prior to the expiration of this Lease shall survive the expiration or earlier termination of this Lease, and Landlord and Tenant shall promptly perform all such obligations whether or not this Lease has expired or been terminated.

**G. No Joint Venture.** Nothing contained in this Lease shall be deemed or construed by the parties to this Lease, or by any third party, to create the relationship of principal and agent, partnership, joint venture, or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties to this Lease shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

**H. Interpretation.** Landlord and Tenant each acknowledge that it has read and reviewed this Lease and that it has had the opportunity to confer with counsel in the negotiation of this Lease. Accordingly, this Lease shall be construed neither for nor against Landlord or Tenant notwithstanding the party which drafted same, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties.

**I. Independent Covenants.** Except as expressly provided herein with respect to offset and abatement, each covenant, agreement, obligation or other provision of this Lease to be performed by Tenant, including without limitation the obligation to pay Base Rent and the obligation to pay Taxes and Operating Expenses, is a separate and independent covenant of Tenant, and is not dependent on any other provision of the Lease.

**J. Time of Essence.** Time is of the essence of this Lease and each of its provisions.

**K. Exhibits.** The Exhibits set forth in the Table of Contents or otherwise attached hereto are incorporated into this Lease by reference and made a part hereof.

**L. Full Agreement.** This Lease and the Exhibits contain all of the terms and agreements between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, except any such contemporaneous agreement specifically referring to and modifying this Lease which is signed by Landlord and Tenant. Without limitation as to the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing agents and field personnel are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements or representations or create any binding understandings or obligations, respecting the condition of the Premises or Property, the suitability of the same for Tenant's business, or any other matter, and no agreements, representations, understandings or obligations not expressly contained herein or in such contemporaneous agreement shall be of any force or effect.

**M. Financial Statements.** From time to time upon written request from Landlord, but no more than twice per each calendar year, Tenant agrees to provide its most recent annual consolidated financial statements, including a consolidated balance sheet, income statement and statement of cash flows, of Tenant for any fiscal year of Tenant. Such financial statements may, at Tenant's option, be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be certified by the chief financial officer or chief accounting officer of Tenant. Landlord shall execute a customary confidentiality letter in connection with the delivery of such financial statements, which shall permit Landlord to share such statements with its partners and lenders.

**N. Captions and Severability.** The captions of the Articles and Sections of this Lease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. If any term or provision of this Lease shall be found invalid, void, illegal or unenforceable with respect to any party hereto by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions hereof, or its enforceability with respect to the other party, the parties hereto agreeing that they would have entered into the remaining portion of this Lease notwithstanding the omission of the portion or portions adjudged invalid, void, illegal or unenforceable.

**O. Tenant and Landlord Authority.** Tenant represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes the valid and binding agreement of Tenant in accordance with its terms. Landlord represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Landlord and constitutes the valid and binding agreement of Landlord in accordance with its terms.

**P. Intentionally Omitted.**

**Q. OFAC.** Landlord advises Tenant hereby that the purpose of this Section is to provide to the Landlord information and assurances to enable Landlord to comply with the law relating to OFAC.

Tenant hereby represents, warrants and covenants to Landlord, either that (i) Tenant is regulated by the SEC, FINRA or the Federal Reserve (a “**Regulated Entity**”) or (ii) neither Tenant nor any person or entity that directly or indirectly (a) controls Tenant or (b) has an ownership interest in Tenant of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons (“**OFAC List**”) published by the Office of Foreign Assets Control (“**OFAC**”) of the U.S. Department of the Treasury.

If, in connection with this Lease, there is one or more guarantors of Tenant’s obligations under this Lease, then Tenant further represents, warrants and covenants either that (i) any such guarantor is a Regulated Entity or (ii) neither guarantor nor any person or entity that directly or indirectly (a) controls such guarantor or (b) has an ownership interest in such guarantor of twenty-five percent (25%) or more, appears on the OFAC List.

Tenant covenants that during the term of this Lease to provide to Landlord information reasonably requested by Landlord including without limitation, organizational structural charts and organizational documents which Landlord may deem to be necessary (“**Tenant OFAC Information**”) in order for Landlord to confirm Tenant’s continuing compliance with the provisions of this Section. Tenant represents and warrants that the Tenant OFAC Information it has provided or to be provided to Landlord in connection with the execution of this Lease is true and complete.

**R. Construction of Certain Terms.** For all purposes of this Lease: (1) all accounting terms shall have the meanings assigned to them in accordance with GAAP; (2) the words “herein”, “hereof”, and “hereunder” and other words of similar import shall refer to this Lease as a whole and not to any particular Article, Section, or subdivisions; and (3) the term “including” shall mean “including, without limitation”.

## **ARTICLE 31**

### **Termination Option**

**A.** Provided no Event of Default exists on the date of delivery of the Early Termination Notice or on the Early Termination Date (each as defined below), at the option of Tenant, and subject to the restrictions hereafter, Tenant may elect to terminate this Lease as of the eighth (8th)

anniversary of the Commencement Date (the “**Early Termination Date**”). Tenant may exercise such right by delivering to Landlord, not later than twelve (12) months prior to the Early Termination Date, written notice of Tenant’s election to terminate the Lease (an “**Early Termination Notice**”) as of the Early Termination Date. Tenant shall pay to Landlord a termination payment (the “**Termination Payment**”) in the amount of \$1,300,794.63, representing Landlord Contribution, brokerage commissions and rent abatement, each amortized on a straight line basis over the initial term of the Lease, at an annual interest rate of eight percent (8%). One half of the Termination Payment shall be due concurrently with the delivery of the Early Termination Notice, and the other half shall be due on the Early Termination Date.

**B.** If Tenant gives the Early Termination Notice and the required Termination Payment as provided herein, this Lease shall terminate as of the Early Termination Date. If Tenant does not give the Early Termination Notice and make the required Termination Payment as provided herein, at Landlord’s election the Lease shall continue in full force and effect. Such Termination Payment shall be deemed earned by Landlord upon receipt of Tenant’s Early Termination Notice. After giving the Early Termination Notice, Tenant shall continue to pay all Rent under the Lease for periods prior to the Early Termination Date, in addition to such Termination Payment. After the Early Termination Date, the terms of the Lease intended to survive the end of the Term shall continue in full force and effect.

## **ARTICLE 32**

### **Renewal Option**

**A.** Subject to the terms of this Article, Tenant shall have the option (“**Renewal Option**”) to extend the Term of the Lease for one additional five (5) year period (the “**Renewal Period**”). If Tenant desires to exercise the Renewal Option, Tenant shall deliver written notice (“**Renewal Notice**”) to Landlord at least twelve (12) months prior to the then current expiration of the Term. The Renewal Option shall be on the same terms and conditions as contained in this Lease, except Rent for the Renewal Period shall be the Fair Market Rental Value (as defined below). Notwithstanding any of the foregoing, any attempt by Tenant to exercise the Renewal Option by any method, or at any time, or in any circumstance, except as specifically set forth above, shall, at the sole option and discretion of Landlord, be null and void and of no force or effect. Furthermore, if an Event of Default is continuing on (i) the date Tenant delivers to Landlord the Renewal Notice or (ii) the date the Renewal Period would commence, Landlord shall have the option, on written notice to Tenant, to declare Tenant’s election to extend the Term to be void and of no effect. At such time as Rent is determined for the Renewal Period, Tenant agrees to execute any reasonable documents to evidence the Term, as extended, and Rent to be paid during the Renewal Period. At such time as Tenant notifies Landlord of its desire to renew the Lease, Landlord shall, within thirty (30) days of receipt of Tenant’s Renewal Notice, notify Tenant of Landlord’s determination of the Fair Market Rental Value (“**Landlord Renewal Rental Notice**”). Tenant shall, within thirty (30) days of its receipt of the Landlord Renewal Rental Notice, advise Landlord in writing of its election to (i) affirm its exercise of its Renewal Option based upon Landlord’s determination of the Fair Market Rental Value, (ii) elect arbitration pursuant to the arbitration procedure set forth below to determine the Fair Market Rental Value (“**Arbitration**”) or (iii) withdraw its Renewal Notice if Tenant has not elected Arbitration. If Tenant elects to renew this Lease, Tenant shall accept such renewal of the Premises in then as-is condition.

**B.** For purposes of this Article, “**Fair Market Rental Value**” shall mean an annual amount per rentable square foot that a creditworthy tenant would have to pay at comparable building located in a comparable location the Chicago Business District office market (the “**Market**”) giving appropriate consideration to annual rental rate per rentable square foot, rental escalations (including type, base year and stops), length of lease term, size and location of the premises being leased, allowances, concessions, rent abatement and other generally applicable terms and

conditions prevailing for comparable renewal space in comparable buildings located in the Market and whether such allowances and other concessions are given to Tenant under this Renewal Option. If the parties do not agree on the Fair Market Rental Value and Tenant has elected Arbitration, the same shall be determined as follows.

**C. Baseball Arbitration.** If Landlord and Tenant are unable to reach agreement on Fair Market Rental Value within thirty (30) days, then prior to submitting their dispute to arbitrators, Landlord and Tenant shall each simultaneously submit to the other, within ten (10) days thereafter, its good faith estimate of Fair Market Rental Value in such situation. If the higher estimate is not more than one hundred five percent (105%) of the lower, then the Fair Market Rental Value shall be the average of the two estimates. If the higher estimate is more than one hundred five percent (105%) of the lower, then each party shall, within ten (10) days thereafter, appoint an arbitrator who shall have had at least 10 years' experience evaluating and/or appraising rental office space in the Chicago office submarket. The arbitrators shall, within fifteen (15) days thereafter, select from the two estimates of Fair Market Rental Value submitted by Landlord and Tenant the one that is closer to the Fair Market Rental Value as determined by the arbitrators. If the arbitrators do not agree, then the arbitrators shall, within ten (10) days thereafter, appoint an umpire meeting the same qualifications required of the arbitrators, and who shall, within fifteen (15) days thereafter, make the final determination and select the estimate closest to the umpire's determination of Fair Market Rental Value. The fees and costs of the umpire shall be borne by the party whose estimate is not chosen by the umpire. Landlord and Tenant shall each pay for the cost of its own appointed arbitrator.

### **ARTICLE 33**

#### **Right of First Refusal**

Subject to the pre-existing rights of existing tenants, Landlord agrees that if at any time during the term of this Lease Landlord receives a letter of intent ("**LOI**") that Landlord is prepared to accept for the lease of any space on the eighth (8th) floor of the Building (the "**Refusal Space**"), Tenant shall have the right and option ("**Right of First Refusal**") to lease the Refusal Space on the following terms and conditions:

Landlord shall provide Tenant with a notice specifying the terms of the LOI, including the size and location of the applicable space and the length of the lease term and the other economic terms of the LOI ("**RFR Notice**"), and Tenant shall have the right, within ten (10) business days after receipt of the RFR Notice, to notify Landlord of Tenant's election to lease the Refusal Space for (subject to the pre-existing rights of existing tenants) the longer of the balance of the remaining Term of this Lease or the length of the term in the RFR Notice. If Tenant does not give Landlord notice in writing within said ten (10) business day period that Tenant intends to exercise its rights hereunder, then Landlord shall be free to lease the offered Refusal Space pursuant to the LOI, and in such event Tenant's rights hereunder with respect to such LOI (but not with respect to any other Refusal Space or other LOI) shall terminate; provided, however, that in the event a lease shall not be consummated within six (6) months of the RFR Notice, then Tenant's rights hereunder shall be reinstated as to subsequent offers. Tenant's Right of First Refusal must be exercised as to one hundred percent (100%) of the Refusal Space that is the subject of the RFR Notice. If Tenant elects to exercise its Right of First Refusal and so notifies Landlord of same within the aforesaid time period, then, in such case, Tenant shall lease the offered Refusal Space as of the availability date set forth in Landlord's RFR Notice for a term equal to the longer of the balance of the remaining Term of this Lease or the length of the term in the RFR Notice and otherwise on the economic terms set forth in the RFR Notice, and Landlord and Tenant shall enter into an amendment to this Lease accomplishing the foregoing. If after the date that Tenant notifies Landlord of its election to expand into any Refusal Space and prior to possession of the Refusal

Space there shall be an Event of Default by Tenant under the Lease, Landlord shall have the option, on written notice to Tenant, to declare Tenant's election to expand to be void and of no effect.

Notwithstanding the foregoing, the foregoing Right of First Refusal shall not apply to any short term (one year or less) lease to any tenant that has signed a lease for other space in the Building but is being accommodated on the eighth floor pending its occupation under such other lease.

#### **ARTICLE 34**

##### **Rooftop Deck**

As part of Landlord's renovation of the Building and subject to obtaining all necessary approvals, Landlord expects to construct at the Building a common area roof deck (the "**Rooftop Deck**"). Tenant shall have the right, in common with other tenants, to utilize the Rooftop Deck, subject to such reasonable rules, regulations and restrictions as Landlord may from time to time impose upon such use. Notwithstanding the foregoing, Landlord reserves the right to prohibit access to the Rooftop Deck by Tenant or any other tenants for periods when the Rooftop Deck may be reserved for private functions. Upon completion of the Rooftop Deck, Tenant shall have the right to exclusive access and use of the Rooftop Deck for any two (2) days during a given calendar year at no cost to Tenant. Tenant shall submit its proposed date of use to the Landlord not later than three (3) months prior to the proposed date of use.

*[Signatures to Follow on Separate Page]*



**IN WITNESS WHEREOF**, Landlord and Tenant have executed this instrument as of the day and year first above written.

**TENANT:**

VIVID SEATS LTD., an Illinois corporation

By: /s/ Eric Vassilatos  
Name: Eric Vassilatos  
Title: President

**LANDLORD:**

111 N. CANAL, LLC,  
a Delaware limited liability company

By: /s/ Andy Gloor  
Name: Andy Gloor  
Title: Managing Member

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement No. 333-256575 on Form S-4 of our report dated May 27, 2021, relating to the financial statements of Hoya Intermediate, LLC. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ Deloitte & Touche LLP

Chicago, Illinois

July 6, 2021

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use in this Registration Statement No. 333-256575 on Form S-4 of our report dated May 27, 2021, relating to the balance sheet of Vivid Seats Inc. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ Deloitte & Touche LLP

Chicago, Illinois

July 6, 2021

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the use in this Registration Statement on Amendment No. 1 to Form S-4 of our report dated May 7, 2021 relating to the financial statements of Horizon Acquisition Corporation, which is contained in that Registration Statement. We also consent to the reference to our firm under the caption “Experts” in the Registration Statement.

/s/ WithumSmith+Brown, PC

New York, New York  
July 6, 2021